A

TREATISE OF THE NOBILITIE Of the Realme.

COLLECTED OVT OF THE BODY Of the Common Law, with mention of such Statutes as are incident hereunto, upon a debate of the Barony of *Aburgavenny*.

With a Table of the heads contained in this Treatise.

LONDON,
Printed by *A.N.* for *Mathew Walbanke* and *Richard Best*, and are to be sold at their shops at *Grayes-Inne* gate.
1642.

FH
MVSEVM
BRITANNICVM

The Table.

OF Barons Page 3.
The definition and description of a Baron 37
Of the name Baron 40
The Antiquitie of the Dignitie of Barons, and the uses of the Name. 43
If a Baron by Tenure grant the Honour holden by Barony, whether shall the Grantee have the Dignity or otherwise? 68
Certaine Cases wherein a Baron hath no priviledge 127
Nobilitie and Lords in reputation, onely 131
Noble Women. 132
Honourable Women of three sorts Ibid.
Ladyes in Reputation. 140

The Hypotheſis or particular queſtion, 143
The Barony of Aburgavenny, *a Barony by Tenure, and an ancient Honour.* 145
The Line of the Haſtings, *owners of the Caſtle of, and Barons of* Aburgavenny 149
The Deſcent. 156
The family of Beauchampe L. *Aburgavenny* ibid.

A Treatise of the Nobilitie of the Realme according to the Law.

Question. Whether the Barony of *Aburgavenny*, with the title and dignitie be descended unto the Lady, being the Daughter and Heire of the Honourable *Hen. Nevill*, the late Baron of *Aburgavenny*, or unto the speciall heire male, unto whom the Castle of *Aburg* being antiently the head of that Barony is descended.

Herein are three things considerable.

1. *First this generall* Thesis, *whether within the Realme of* England, *there be any* Baronies *by Tenure*, *and whether* Baronia sit dignitas annexa modo (vizt.) *whether the heire male having the Castle holden* per Baroniam *shall*

have the title, or the heire generall which hath not the Castle.

2. *The second is* Hypothesis, *whether by former presidents it may be shewed that this Barony of* Aburg. *hath beene guided by the lawfull descent of the Castle of* Aburgavenny, *or whether the same hath gone to the heires generals sundred from the Castle.*

3. *The third is, that it is not to bee doubted whether the dignitie of Baron may descend to the heire female (for where such Castles, &c. is holden* per Baroniam, *and doth descend unto the heire female. There likewise the title, &c. as in many Noble houses of this Realme is most evident) but The Question is whether the title of Baron or Baronesse may descend to the heire female, whereas that fee holden by Barony, is descended to the Heire male or no, and whether the fee to support the dignitie may bee severed from the dignitie.*

A Treatiſe of the Barons of this Realme.

IT is true of *Vlpian* *Publicè intereſt quod ordinum familiarumq; ſolva ſit*, Which duly conſidered, is cauſe that the ſpeciall heire male of the late Baron deceaſed without any affectation of honour or humour of ambition deſireth to make knowne what things former times obſerved, hee hath now found to have been conſidered in ſuch like Quæries; Nevertheleſſe with all humility and loyall dutie hee ſubmitteth himſelfe to the princely pleaſure of the Queenes moſt excellent Majeſtie, in whom is the fountaine of all Nobilitie, and unto the cenſure of

Lib. O ſed ſi F. de ventre inſpiciend. Baldwin in la ſacraledge divinis reſcript. Ante Nobilit. cap. 6.

the right Honourable the Earle Marſhall of *England*, unto whom the juriſdiction and Cogniſance of the ſame cauſe by office appertaineth.

1. By what law this Quer. is to be determined.

But before proofe be produced, it ſhall not bee amiſſe to conſider two principall things, what manner of proofe in theſe cauſes is moſt pregnant, and by what law this controverſie might beſt bee determined.

2. Touching the ſtate of our Baronies.

3. Some things are requiſite to bee delivered before in generall manner touching the ſtate of the Baronies within the Realme, whereby the Querie in hand may be the better apprehended, and receive the more eaſie reſolution.

As touching the firſt, it is to bee obſerved, that the dignity of a Baron, and that name given to a degree of Nobilitie, was not uſuall any where, untill neere the declination of the Rom. Monarchy, and therefore thoſe parts of the civill Law, which containe the ancient Roman lawes doe affoord ſmall proofe of the deciding of this kind of controverſie, otherwiſe then perchance now and then there are

are inſerted ſome generall ſentences or axiomes of the law of nature, which may be particularly applied as the occaſion ſerveth.

Therefore in thoſe times upon the ſundry invaſions of thoſe Northerne people, which haſtened the ruine of the Romane eſtate, when Tenures and it which they call *Feuda*, had their firſt originall, divers new dignities of Nobilitie were deviſed, and drawne from the ſervice of the field, whereof ſome of them formerly had beene but names of Offices, as may appeare in the ſecond booke *de feudis*, in the title *Quis dicatur dux Marchio*, &c. *Goths. Vandalls.*

Hee that would not have the controverſies moved within the Realme concerning this kind of Dignities to be determined by the Common law, and yet would that the common cuſtome of our Countrey ſhould direct the ſame, ſpeakes in my underſtanding contrary things, for it is a generall Maxime, that the *Common cuſtome of the Realme, is the common law of the Realme*. Therefore to affirme that the common uſage of the Countrey ſhould *7. H. 6. Martin. 9. Ed. 4. & 38 H. 8. Cuſtom. B. 59.*

direct the controversie, and to denie that the common Law should determine it is contrary to it selfe.

That the common Law doth determine this kind of Controversie, it cannot seeme strange to him that considereth the generall division, whereby the said law is distributed into parts, *Est autem jus publicum, & jus privatum. Jus publicum*, *Bracton* disposeth it, *Est jus quod ad statum* Reipub. *pertinet & consistit in sacris Sacerdotibus & Magistris*. Others give a more large scope to this division, distributing *jus publicum* into three parts into *Jus civile, jus fecile, & jus questorium.*

Bracton, lib. 1. cap 5. & 2 de justo & jure.

Ioachimus Hosp. de juris arte, lib. 2. de rebus humanis sive de jur' civil.

The first part *jus civile*, though it be the generall name of the whole Law, yet in this division they doe understand thereby, that part of the Law wherein consideration of many things are had, tending chiefly to the publick good, and wherein persons of men are considered diversly; *Dividuntur quinq; forme modis, pro loco, pro facultate, pro ordine, pro jure, pro dignitate.* Under that division which is in respect of Order, all degrees of persons, Noble and

and ignoble are comprehended, and under the diviſion, in regard of dignity the Prince, Magiſtrate, Officers of all kinds are contained. The conſideration therefore of all degrees of Nobilitie is a part of the Law practiſed in every Kingdome, under that diviſion which reſpecteth publicke juſtice, and therefore in regard of perſons *ſub ordine debito*, this is now apparently perceived if we apply our thoughts to the regard of juriſdiction in generall, which reſpecteth the fountaine of juſtice from whom it ſpringeth.

Pro ordine.

Pro dignitate.

All *Juſtice* is either *commutatiue* or *diſtributiue*. *Commutative Juſtice* determineth debates growing upon contracts, inheritance, or chattels, and thoſe bee reall or perſonall, which ſuites are commenced *ad inſtantiam partis*, by Plaint, Bill, or Writ, in the ordinary Court of Juſtice within the Realme. *Diſtributive Juſtice* is twofold, for either it doth ordaine puniſhment for ſuch crimes as doe fall within the correction of the lawes, or elſe it doth diſtribute a reward for vertues. That kind of *Diſtributive*

justice that inflicts punishment proceedeth in some cases *ad instant. partis*, as in appeales of Murder, Rape, Robery, *&c.* That most usually *Ex officio*, and that either by indictment or presentment. That kind of *Distributive justice* which concerneth the advancement of vertue in bestowing of honour, which is the proper guerdon of vertue, remaineth with the highest Soveraigne, annexed to the Imperiall Crowne of the Realme, for as vertue is the gift of none but God from heaven, so the reward of vertue with honour for her Majestie, Gods substitute on earth within, *&c.*

In Camer. stellat. 39. Eliz. inter Comit. Kanc. & Rotherom.

But when honour and armes (being the ensignes of honour) be once bestowed on any, or possessed by any, if there shall arise contention betweene competitors for the same, pretending severall challenge thereto the ancient policie of the Realme, hath ordained an especiall Court, the jurisdiction whereof is immediately derived from the Crowne, and whereof the Judges have beene right honourable personages, *The Lord high Constable*, and the

The proper Court of honour & armes.

the *Earle Marſhall*, and in later times the Judge thereof is the Right Honourable the Earle Marſhall, the juriſdiction of which Court conſiſts in the execution of that part of *Diſtributive Iuſtice*, which concerneth the advancement and ſupport of Vertue.

The Court wherein, and the Judges by whom theſe controverſies are to be determined by that which is aboveſaid may partly appeare. The Lawes whereby the ſame are to bee decided, are the Lawes of God, the generall concluſions of the lawes of Nature, and of the law of Nations, together with the cuſtomes & uſages of ſtatutes and Ordinances of our Countrey in like caſes heretofore, either obſerved, or provided, or which are the primary grounds, and chiefe principles of the lawes of this Realme. And if no Cauſe heretofore hath happened that might bee a preſident to determine ſuch future Controverſies, then in the judgement of ſuch doubts, that reſolution is to be imbraced, which is moſt correſpondent to our government agreeable with the diſpoſition of

Diſt. lib. 10. *cap* 4. *Com.* 304. 6.

of our people, and so especially as that the new judgement (so it be promulged) doe not in any matter of consequence impeach, infringe, or infeeble any old or former received Law, or usage then in force. The law therefore of our Countrey so branched into severall Courts, though the severall Jurisdictions aforesaid, ought to determine all civill and criminall Causes within the body of this Realme concerning whatsoever Causes.

8. Ed. 4. per Yelverton, Bract. lib. 1. cap. 2.

Nevertheless, some men there are not duly considering of what principles and parts the Lawes doe consist, have laboured to prove that the Quæ. of Nobilitie and Armes should not bee determined by the lawes of the Realme, framing unto themselves many Arguments to prove their Assertion, the chiefe of which arguments are here proposed and answered.

Object. 1.

First, it is said that the Lawes of the Realme doe make all the Daughters equally to inherit, but it is not so in the descent of the Dignities and titles of Honour, and therefore it seemeth that the Quæ. concerning the descent

descent of dignitie are not determinable by the lawes of the Realme.

To this Argument may bee answered, that there are divers inheritances, some of things corporall, as lands, tenements, *&c.* some of incorporall framed, not by nature, but by mans policy, and therefore called *Iura*: the first sort doe lie in Livery, the other are such as doe lie in grant. Of the later sort there are divers kinds, some matters of preceptible profit, as Offices common, *&c.* Some others are matters chiefly of ease, as wayes and passages over the land of others; Some other concerne matter of profit and pleasure, as Forrests, Parkes, Chases, Warraines, *&c.* Others of jurisdiction, as the grant of Courts, others of Priviledges and immunities, as a getter to one and his heires, to be quit of Subsidies, Dizmez, Quinzems, *&c.* Others matter of honour, as the dignitie of a Duke, Marquesse, Earle, Viscount, or Baron, granted to one and his heires generall, or to him and the heires of his bodie.

Resolve. Pract. li. 2. cap. 4 fol. 10 & li. 2. ca. 5 fol. 13. Coment. 170.

Inheritance concerning matters of honour,

Cap. 1. Præterea de prohibita feodi alienatione per Fredres.

honour, being things in their nature, participating of superioritie and eminency, are not partible in any equalitie among many, and therefore must of necessitie descend unto one, and that is unto the eldest Daughter inheritable, where there are no heires males lawfully to challenge the same.

23 H. 3. Fitz. Com. 8.

There was a Judgement in the time of *H.* 3. touching the descent of the Earledome of *Chester*, after the death of the Earle, who died without issue male, his Sisters being his heire, which Judgement was, that the said Earledome should be devided as other lands, and not to the eldest, But this Judgement was holden erroneous then. For *Bracton*, a learned Judge of that age, thus seemeth to write thereof (*viz.*) *De hoc autem quod dicitur quod de feodo milit. veniunt in divisione capital. Messuagia, & inter coheredes dividuntur; Hoc verum est nisi capitale Mess. sit caput Comitat. propter jus gladii quod dividi non potest, vel caput Baroniæ castrum vel aliud ædificium, & hoc ideo ne sit caput in plures particulas divi-*

Bracton, lib. 7. fol. 76 de Coronen.

dividatur, & jura Comitat. & Baroniar' deveniant ad nihilum per quod deficiat regnum, quod ex Comitat. & Baronibus dicitur esse constitutum. si autem plura sunt ædificia quæ sunt capita Baroniæ dividi possunt in Cohæredes facta electione, salvo jure assuet. quia cum plura ibi jura sunt quod liber per se poterit integre observari, quod autem non est in uno ut prædict' est licet à quibusdam dicatur. Quod in alijs Regionibus aliquando de consuetudine dividatur, sed quod nunquam dividi videtur in Anglia debeat, nec visum fuit contrar', & erit consuetudo regionis observanda ubi hæreditas est quæ petitur, & personæ nascuntur quæ petunt; Et unde si dicatur quod in regno Angl. aliquando facta fuit partitio, hoc fuit injustum. It is therefore evident that Baronies, &c. doe by the lawes of the Realme descend unto the eldest Copercener, and Judgement given once to the contrary. Thereof *Bracton* doth rightly accompt to be unjust, his reason is notable; For in as much as the Honour and Chivalry of the Realme doth chiefly consist in the Nobilitie, reason will

Vermon liver d'antiquities à placito, 290 ad placitum. 301.

will not that such dignities should be divided among Coperceners, whereby through multitude the reputation of honour in such succession, and so divided might bee impaired, as the strength of the Realme being drawne into many hands with decrease of livelihood by such partition should be infeebled. In which resolution *Britton* the Baroned Bishop of *Hereford*, who compiled this Booke in the name, and by the commandment of *Ed.* 1. accordeth, who delivered this as a speciall Caveat; *En tous cases sont les droits des espees* (that which *Bracton* calleth *Ius gladij*) *gardes de sole misse & dismembres*, he calleth it *Ius gladij*, because Dukes, Earles be at the time of their creation, *Cinguntur gladijs gladius autem significat defensione, reginæ & patriæ*; But howsoever that judgement was given, or whensoever, it was nevertheless very evident that it was soone redressed, for if it were given upon the death of *Rannlph*, the last of the name E. of *Chester*, who died about 17. *H.* 3. the Writers about that time doe testifie, that the Earledome of

Pet. Greg. de repub. lib. 7. cap. 5.

Britton, 187. de herit. devis.

of *Cheſter* came wholly to *Iohn Scot*, the ſonne of *David* Earle of *Huntington*, and *Anguiſh* and of *Maude* the eldeſt Siſter of the ſaid *Rannulph*. If it were given upon the death of the ſaid *Iohn Scot*, who died without iſſue about 24.*H*.3. (for in the reports of the Law, the difference of a yeare is no great matter) yet notwithſtanding the ſaid Judgement ſtood not in force, for that the ſaid King aſſumed the ſaid Earledome into his owne hands upon other ſatisfaction made to the Siſters Coparceners of the ſaid *Iohn Scot ne tanta hæreditas inter Coles deduceretur.*

Math. Paris Monaſt. Sancti Albani Chron. 366.

That the deſcent of Dignities and Offices of Honour are determinable by the Common law is made manifeſt by the great cauſe concerning the office of the Lo.high Conſtable of *England* challenged *tempore H*.8.by the Duke of *Buckingham*, and determined by the reſolution of the Judges, as by a note of that Caſe extant, whereof my Lord *Dyer* in his Reports hath a memoriall is moſt evident where the Caſe was that *Humph de Bohun* Earle of

M.6.H.8.

Dyer, 285.

of *Hertford* and *Eſſex*, held the Manor of *Hatfield Newnham*, and *Whitinghurſt*, *in com' Glouc' du roy pur ſervice de eant hault Conſtable d' Angl. q3 mor' tyent iſſue 2 files que font partition de meſme les Maners, & part le office eant ſervic' pur reaſon de tenure q3 deſcent' al ambu files dẽe exerciſe pur lour ſufficient deputie (dum ſole' vixerint) mez aprez lour mariage, & fuit dẽe exerciſe ſolement pur le Baron el'eigne, Mes quia Hen. de Bullingb. Ca'ps H. 4.) q3 ad eſpouſe le puiſne a q3 le man' de Whittenhurſt de eant part' de terr' iſs' ten' fuit allot' pur ſa pur port.* Another Querie was moved, whether by the unitie of parcell of the tenancy in the King the ſaid Office, were not determined, or whether this were in the other Siſter, which the Juſtices reſolved that the Office had its continuance in the eldeſt Siſter and her heires, of whom the ſaid Duke was diſcended, but becauſe the exerciſe of the ſaid Office was a ſervice in reſpect of tenure, the ſaid Judges further reſolved that the King might refuſe to have the ſaid office exerciſed, as any Lord

Lord may refuſe the homage of his Tenant; All which reſolutions the two chiefe Juſtices did ſignifie unto the King, according to the names of themſelves and the reſt.

Second Objection that by the law of Chivalry, if the Widow of a Duke, Earle, Baron, &c. doe marry with a Knight, Eſquire, or Gentleman, then nevertheleſſe ſhee retaineth her name of honour, whereas the Common Law doth otherwiſe determine thereof, and therefore they conclude that the common Law doth not determine this kind of controverſie concerning the title, names and dignities Noble. *Object. 2*

There muſt be made a diſ-Junction betweene the ſtrictneſſe of Law, and courteſie of Ladyes at the Court, for it is a rule in Law, as it is the ſame law of Chivalry, and in that point ſo is, and ſhould be knowne among the *Heraulds*, for aſmuch as a report of law in that caſe doth acknowledge it to be taken out of the bookes of Heraulds that *Quando mulier nobilis nupſerit ignob.* &c. Of the which *Forteſcue* ſometime chiefe Juſtice of *England* *Reſolu.* 14 H.6.a. & 8.a. 5.Mar.bre. Br.546. & noſme 69. Forteſcue, 100.

yeeldeth a notable reason, *Mulieres honore maritorum*, &c. *sin autem minoris ordinis verum?* For if shee be honoured with any title in respect of her Husband, it is reason that after his death she marrying with an inferiour *sub cujus potestate vivet*, that she should bee of like qualitie and reputation as is her said Husband. For as she was inabled by the one, so must she be content to leave that Nobilitie by strict course of law for lieu of the other, so that in this point the law is one way, and the honour and courtesie of Ladyes another. And as the Civilian saith in the like case, *Aliud est jus, aliud Privilegium.* Nevertheless, the bookes of our law do make mention of that Courtesie, and allow of it as a Courtesie though not as the Law.

Cod lib. 10. de incolis leg. final.

6. E. 3. 7. E 6. 79. 3 Eliz 23. 69.

With these doe agree the law of Nations, with which concordeth also the Civill law, *Fœminæ nuptæ clarissimis personis clariss. personarum appellatione continuentur.* But of the other side *clariss. fœminarum nomine senator. Filia, nisi quæ viros clariss. sortita sunt, non habentur. Fœminis enim dignitat.*

clariss.

clariſſ. mariti tribuunt. Parentes verò donec plebeis nuptijs fuerint copulatæ. tamdiu igitur clariſſ. fœmina erat quamdiu Senatori nupt. eſt, vos clariſſ. aut ſeparat. ab eo alij inferioris dign. non nupſerit.

Cod de dignit. leg 12.

Nevertheleſſe, in Kingdomes this holdeth not place in the blood Royall, for *Si filia Regis nubat alicui Duci vel Comiti dicitur tamen ſemper Regalis.*

Iacob Rebuff in d. ct. leg. 1. lib. 12. Cod de dignitat.

Likewiſe, the ſaid firſt rule touching the Nobilitie of Women married unto perſons ignoble doth faile where they inherit thoſe dignities. For if a Dukedome, Earldome, or Barony deſcend unto any womar, who taketh an ignoble man to husband, that husband ſhall not debaſe the wife, having ſuch Dignities deſcended, but rather he in her right ſhall beare the title of ſuch dignities eſpecially if he be intituled by the Courteſie.

A third Object, is this, It is ſaid that by the law of Chivalry exerciſed within the Realme, if a Baron be created an Earle, *&c.* that the heire apparent of ſuch Earle, *&c.* ſhall after ſuch Creation of his Father beare the title

Object 3.

of the Barony, &c. but this is not usuall by the course of the Common law: therefore the descent of such Dignities not to be guided by the Common Law.

Resolu. The common law doth not disallow any such usage, for it being the custome of the Realme, is the law of the Realme. Howbeit the Common Law doth put a difference betweene such Heires apparent as carry those Titles lawfully in respect of the usage, and such others as have them by Creation or otherwise, for such Heire apparent is no Peere of the Realme as those by Creation, or such as have the Earldome, &c upon descent after the death of his Auncestor, and therefore as when the Lord *Hen. Howard*, Earle of *Surry*, Son & Heire apparent to *Thomas* Duke of *Norfolke*, was attainted his Triall was by *Iury* of Knights and Gentlemen, not by Barons, &c. for that hee was an Earle by Nativity, which in respect of tryall the Law doth not allow. The like tryal chanced to the Lord *Gray*. who 33. *H.* 8. was in B.K. arraigned of treason, and appointed

An Earle by Nativity.

pointed to bee tried by a *Jury* of Knights and Gentlemen, and not by Peeres, *Cauſa quaſupra*; but he confeſſed the Indictment and the Jury were diſmiſſed, yet ſuch ſhall hold precedency of place at Court, and in the preſence of their Soveraigne, as is uſuall in that behalfe.

It is objected fourthly, that by the Common law a man may not bee called Lord of that he hath not; But by the law of Chivalry a man may bee created Earle of a County, having no land therein: therefore differ. *Obje.* 4.

It is true that ſome particulars of ordinary proceedings in the law doth differ from other proceedings concerning Chivalry, and yet their difference is no other, then as one hand doth differ from another, both are hands, and both of one body. That part of the law which concerneth purporty, doth not allow a man to bee called Lord of that wherein he is no way owner in demeſne or ſeignory, but when you draw the law to the conſideration of dignity, the whole reſolution muſt reſt upon the Patent *Reſol.* 1.

of creation, wherein the name is appointed at the pleasure of the Soveraigne, for one may be Earle during the life of another, if the Creation be so.

Earle pur autre vie 31. H 6.29. pur Danby.

2. But I answer further, that it is not true that every Earle must be Earle of a place, nor every Earle of a place Earle of a County, nor that every Earle of a County, hath nothing in that County whereby he is Earle. For the better manifestation consider that originally within this Realme Earldome of Counties in the antient English Saxon Governours were not onely dignities of honour, but also offices of Justice, for that they did further the administration of Justice in the County whereof they were Earles or Aldermen, they likewise had their Deputies under them, the Sheriffe an Officer, yet containing the name of his substitution in Latine *Vicecomes*. These Earles in recompence of their travailes received a Salary name by the third penny of the profits of the said County, which continued long after the Conquest, and was inserted

Vca. leg. Edgar regis de Consil. Lamb. 80. n. 5.

Camden. 107.

as

as a princely benevolence in the Patent of Creation, as by divers antient Charters may appeare, which afterward were turned into Penſions, for the better maintenance of that honour, and as appeareth by a booke caſe upon the pleading of the Patent, whereby *H.6.* Created that worthy Knight, Sir *John Talbot* Earle of *Shrewsbury*, which Penſion is ſo annexed unto their Dignitie, as that by any meanes of alienation it cannot be ſevered, and therefore in reſpect of ſuch Penſions which were the third part of the profits of the County, or other ſumme in lieu thereof, ſome have not without probabilitie imagined, *Quod Comites nominabant capiend. fiſco Regis ſocij & Comites fido participes eſſent Lamberd.* &c.

H 3. dedit Huberto de burgo 40 pro 3. denor Com. Cant. de quoeund. creavit comit. habēd. ſibi, & hæred. de corpore Marger. uxor Alexand. reg. Scotiæ. 13. H 3. in turr. Lond. 33 H.6.29. 6 H.8. Dy. 2.

Of the ſingle Ear. and not *Palentine* with *Engl.* there have beene principally two kinds, but every one of them againe ſubdivided into ſeverall branches, for either they take their names of a place, or hold their Title without any place. Thoſe that take their names of a place, are of two

kinds, for either the same place is a County which is most usuall, or else some other place and no County, as a Towne, Castle, or honour, &c. of which later sort some are more antient, having their originall even from the Conquest, or shortly after: as the Earledome of *Richmond* in Yorkshire. *Clarence* in Suff. *Arundell* in *Essex*, all which had their originall in the time of the Conquerours by donation of those Castles, &c. The Earledomes of *Bath temp. H.7. & H.8.* erected in the family where now it remaineth, and the Earledome of *Bridgewater*, whereof Sir *Giles Dawbeney* was Created Earle, *temp. H.7.* Earledomes which have their titles without any place, are likewise of two kinds, either in respect of office, as is the Earle Marshall, for it is granted in this or the like manner. *Officium Comit. Mareschal' Angl'* with further words, (*viz.*) *A.B. &c. Comit. Mareschallum Angl. creamus, ordinamus, &c.* by which it appeares that the very office is an Earledome.

Earle by birth.

The second sort are Earles by birth, and

and so are all the Sons of the Kings of *England*, if they have none other dignitie bestowed upon them, and therefore it is said that *John* afterwards King of *England*, in the life-time of his Father *H.2.* was called *Counte sans terre*, before he was affied unto *Alice*, the Daughter of the Earle of *Morton* in *France*.

A fifth Object. is this, The law of Chivalry proceedeth not in the accomplishment of a combate in such manner as is performed by the course of the Common law, either in the Writ of right by Champion, or in the Appeale by person, therefore the managing of the causes in Chivalry is not in the common law especially, forasmuch as our bookes doe acknowledge them to be determined by course of the Civill law. *Object.5.* 37.H.6.36 37.H.6.

It is true, that the manner of performance of those severall kinds of Combates is very different, and although the combate for Honour, or upon the Appeale for treason be performed within *England*, according to the customs of forraigne Nations in some *Resol.*

some respects, although not altogether so, that almost every particular Countrey hath a particular manner, by meanes whereof some men seeing the difference betwixt those and the ordinary course of observance of Combates for land in the Writ of right, or for life in the Appeale of felony, have therefore imagined that the proceeding in Combate before the Lord Constable or Lord Marshall in the Appeals of treason, or in causes of Honour betwixt such persons, as by the law may wage the same, should be according to the course of the Civill law, yet nevertheless it must bee certaine that the Civill law of the Romanes, is so farre off from giving any allowance thereto, as that it seemeth to forbid it. For that law of the Christian Emperour *Constantine* is most notably alledged to this purpose by most of the learned Doctors of the Civill law, that have written *De duello*, the words of which law are these, *Cruenta spectacula in otio civili & domest. quiete non placent.* And that which for disputation sake

Paris de Putio Iohannes de deligatio Iac. de Castilio And. Assitus. Iul. Herret. Anthon. Massæus, Cod. lib. 21. gladiatus lege unica. Dig lib 9. ad legem aquiliam, leg. 7. Iustus Lipsius de gladiatoribus.

is

is alledged to the contrary, *Si quis in colluſtratione vel pancratio vel pugiles dum inter ſe exercentur alius alium occideret. Si quidem in publico certamine alius alium occiderit ceſſat, equalia, quia gloriæ cauſa, & virtutis non injuriæ gratia videtur dannum datum,* is underſtood rather of Juſts and ſuch like playes *de gladiatoribus*, as were uſuall among the Romanes, all which were abrogated by this law of *Conſtantine*.

Nevertheleſſe among theſe warlike Nations that invaded the Romane Empire this kind of ſingle Combate hath beene againe exerciſed in divers Kingdomes, according to the cuſtome of every ſeverall Countrey. Among the *Lumbards* it was permitted in 19 caſes; Their weapons being nothing elſe but the Shield and the Baſton. And yet of the uſe, or rather abuſe thereof, the King *Katharius* ſeemeth to complaine, purpoſing to have abrogated the ſame. *Quia incerti ſumus de iudicio dei, & multos audivimus per pugnam ſine juſta cauſa ſuam cauſam perdere, ſed propter conſuetud. gentis noſtre Longobardor*

l. de Ligano de Duel. n. 5. Inlius Ferret. de duel. n. 20. Andr. Aſcius de duell, cap. 4. de legibus Longobard, tit. de Monarchijs, n. 3. Iul. Ferret de duello. 17. Vet Gregor. lib. 48. cap 16. n 8.

bardor, legem impiam vetare non possumus. In the severall Kingdomes of *Cicilie* in *Spaine*, it hath beene allowed in some Cases; Likewise in *France* by the constitution of *Philip le Beau. Anno* 1306. Likewise the Emperour *Fredericke* did permit it in certaine cases expressed in the Treatise *De consuetud. feodorum* in the title *De Pace tenenda & ejus violatoribus si quis hominem, si quis alium, si quis Miles, &c.* In some places of *Italy* the battell hath beene allowed upon lesse occasion, of the which *Alciatus* maketh mention with some detestation.

De pugn. cerw. cap. 4. in fine.

Hereof it is evident that the order, manner, and causes of single Combate are different in divers Countries, and every Countrey: that people following their owne Customes and usages being their peculiar Law: and in this our Realme, it was a tryall much more frequented in antient times neere the Conquest then succeeding ages, for it is evident by some antient Records and Plea rolls yet extant of King *Steven, H.* 2. *R.* 1. and King *John*, that it was permitted to be waged in personall

Wager of battell in personall causes.

personall occasions in cases wherein men now commonly wage their law, and therefore in 37.*H*.6.and 37.*H*.6. fol 20. *Needehams* opinions are much more agreeable to the truth, where both doe affi me that such waging of battell before the Lord high Constable and Earle Marshall, is by the Lawes of this Realme, although it bee determined before them, and so great a Sympathy is betweene that Court and others of common Justice, as that the Judges shall take notice of the proceedings before the Lord Constable and Earle Marshall upon occasion offered rising in debate before them.

37.H.6. fol 36. 37.H.6. fol. 20. Glan. lib.8. cap 8. Que battaile partee gage en ascun case en vn' bre. de fac. Iudgement.

The sixth Objection is this, The common Law in the trials of matters in sentence doth proceed by a Jury of 12. but the law of Chivalry in the triall of matters in fact concerning Honour and Armes proceedeth upon examination of witnesses, which is according to the course of the civill Law: therefore matters of Honour are to bee determined by the civill (not common) Law.

Object.6

In the tryall of matters in fact, the common

Resolu.

common law doth not alwayes proceed by a Jury, for although they most properly lye in the Conusance of the Jury, yet in other matters the Law hath ordained some other manner of tryall, as they gage others by Witnesses, as if a Wife bring a Writ of Dower, supposing her Husband to bee dead, and the tenant saith that he is alive, whereupon they are at issue, this shall be tried by Witnesses onely, and not by Jury. So likewise if land be recovered by default, and after brings a Writ of discript, for that hee was not lawfully summoned in the former action, upon which they are at issue, this shall be tried by examination and depositions of the summoners, *&c.* and not by the Jury. In a Writ *de Nativo habendo*, whereby the Plaintife claimeth the Defendant to bee his villaine, the Defendant saith hee is a freeman, and thereupon they are at issue, this shall not be tried by a Jury, but by Witnesses, namely such males as be of the blood and kindred of the Defendant and not otherwise.

8. Ed 2. triall 94. 9 Ed 2. Iudg mēt, 231.

33. H. 6. 9. 35. H. 6. 47

13. Ed 1. 36. 37. 13. H 7. vill 43. 47. H 3. 15. Ed 2. Coron 385. Vill. 32. 19. H. 6 32.

48. Ed. 3. 34. H 3. 46. E. 3.

Some matters of tryall in fact are tried

tried by view and inſpection of the Court, & not by a Jury as the Nonage of the Plaintiſe or defendant alledging himſelfe to be within the age of twenty one yeares. 8. *Account.* 121.

And the like tryall is of a Maykem, wherras in an Appeale of Maykem the parties bee at iſſue, whether the hurt be a Maykem or no, ſometimes the Courts of the ordinary of ſome other Iudge or Officer, as in matters ſpirituall by Certificate thereof from the ordinary, *&c.* And concerning matters done beyond the Seas in the Kings Army, or concercerning Combate for honour, armes, *&c.* by Certificate of the Lord Conſtable or Earle Marſhall, *&c.* whereby appeareth the weakneſs of the former Argument, but in caſes uſuall the law alloweth the triall by Witneſſes without Iury; And therefore in the Lord Conſtable and Earle Marſhals Court matters in fact concerning Honour and Armes (which lie not in the knowledge of the vulgar ſort) the the Common Law grounded upon the beſt reaſon would it ſhould be tried by

21. *H* 7 33.
39. *E* 3 32.
7. *H* 4 24.
38 *E* 3 27.
18. *E* 4 36.
2 *H* 4 17.
22. *H* 6 27.

3 *H* 6. 6.
48 *E* 3 3.

by witnesses or matters of Record, as the cause shall require, and not that the same should be tried by the conscience of the vulgar people, being matters whereof they have no knowledge sufficiently to discerne.

22. Assess. pl. 24.

Hitherto have I wandred of purpose, to shew that our homebred Law is sufficiently able, and ought to trie all causes civil (other then Marine) such as are rising with the body of the Realme (and not in forraigne parts) whereby appeareth the excellencie of the Common Law, which maintaineth the particular jurisdiction of every particular Court. For it is the common Law (through the sundry Writs of prohibition which it useth) which keepeth every Court within the compasse of his proper sphere, and upholdeth the jurisdiction of the Court of the Earle Marshall. By that therfore which hath beene said, two things may sufficiently appeare.

1. First, that the Court of the Lord Constable and Earle Marshall have had, and now the Earle Marshals Court hath particular jurisdiction originally

ginally and primarily to determine matters of controverſie concerning Chivalry, Dignity, Honour & Armes, and ſome other things acknowledged to belong to the ſaid Court by the Lawes and Statutes of our Countrey.

Howbeit by a conſequent but not originally, ſome other Courts of ordinary juſtice may, as the caſe ſhall require, determine likewiſe ſuch like controverſies touching honour, *&c.* but not (*eaſe or in ſua*) but rather by an adjunct, as by this example may appeare. If there bee two competitours of a Barony, and during the time that their cauſe is litigious, the one of them is impleaded at the common Law by originall Writ *Cap. alz & plures* in a perſonall action, and thereupon an exigent is awarded, whereupon inſueth an Outlary, the party outlawed brings a Writ of errour, and aſſigneth for errour, that hee having ſuch a Caſtle to him deſcended, *&c.* holden *per Baroniam*, whereupon his Anceſtours have beene Barons, and he himſelfe Baron, no Cap. ought to be awarded againſt him, but in very ſpeciall caſes onely,

therefore the outlary erroneous. This matter of errour alledged, the Court cannot consider without due determination of the title of the Barony, wherein if the Court of the Earle Marshall should adjudge one way by any forraigne Law in the same question depending there, and the Court of B.R. adjudge another way by the common law of the Realme: upon this Writ of errour, there would ensue thereof a great confusion and inconvenience in the Common-wealth, which the law will rather eschew then any other mischiefe whatsoever.

2. Secondly, therefore it doth appeare by the speeches aforesaid, that the common law ought to decide this controversie, and that both Courts ought to follow one and the same law, in as much as the common law is more ample then ordinary reports of Cases in the yeare bookes. For whatsoever is not disagreeing from the law of God, and is consonant to the lawes of nature and Nations, allowed by the customes of our Countrey

Countrey not disagreable to former presidents answerable to all good learning is the vndoubted common law of the Realme, which knowledgeth no other Author but God and nature, and whereof the Iudges in all ages have ever thought it honourable to receive all good helpes from every faculty of literature in the ending of difficulties questioned before them.

What mãner of proofes are to be used in your Controversies.

The proofe therfore in this controversie to be produced shall be arguments of reason, allegations of authoritie, presidents of time drawne out of Records, Historics, auncient Monuments, Lawes and customes of our owne countrey and furnished with such other matters of necessary knowledge as may tend to the better explanation.

The 2. matters before proposed.

It followeth somewhat to speake in generall of the dignitie and degree of a Baron, whereby the Qu. in hand may be the better conceived and be reduced to a more cleere determination, which for order sake I will reduce to the consideration of these principall heads.

1. *The definition or description of a Baron.*
2. *The Etimologie of the name of Baron.*
3. *The antiquitie thereof, and the divers vse of the name.*
4. *The division and consideration of the severall Kinds of Barons.*
5. *The determination of certaine, Qu. and difficulties tending to the more manifestation of the natures of the severall Kinds of Barons.*
6. *And lastlie a declaration of the divers and sundry priviledges allowed by the lawes of this Realme unto the Barons and Nobilitie of the same wherin the vulgar, &c. hath no participation.*

Which things being discouered there will be laied open (as I doe conceiue) a plaine way to the finall conclusion and resolution of the question in hand.

The definition or description of a Baron.

IT is a rule of Law that *Omnis definitio in jure periculosissima. Rarum est enim ut non subverti possit.* And therefore I doe not often see any definition or description of a Baron. *Baldus* thus describeth a Baron, *vt sit quisquis merum mixtumq; imperium in aliquo Castro opidove concessione principes habeatur,* But his seemeth rather particular to some then generall to all, and therefore *Alciatus* vseth these words *Nobis alia est sententia quia sciamus et in Germania, et Gallia solum Barones dici quibus super opidorum jurisdictionem hæc dignitas specialiter concessa est.* Some thinke they are those which are meant under the name of *Valvasores majores & Capitanei,* In the second booke *De feodis de titulo Quis dicatur dux, &c.* And some others would have the dignitie of a Baron to containe every noble dignitie under the Earle. Some common Lawyers there are which extoll the digni-

Dig. l. 51. de regulis juris 203. omnis definitio.

Baldus Canonus de sectionibus.

Andr. Alciatus de duello, c. 32. Refer. Pet. Greg. in reg jur. H. 6. capite 10.

Grand de supplenda neglig. prælator. in Sexto.

tie of a Baron before that of the Earles, by reason of a subcription to a decretall epistle directed *Baronibus & Comit. regin Portugal.* They not considering that in another place in the same decretals it is more orderlie placed, *Nullus Imperator seu Rex Romanus aut alius Imper. aut Rex, princeps Marchio, Dux, Comes aut Baro, &c.* Other some do equal the Baron with the Earle, affirming that *Comiti Baro. prorsus equiparatur,* &c. *nullaq; differentia nisi quod de Comitat. non sit investitus, &c. haud quicquam Comite censeatur inferior.* And thus every one of them have written conformably to the customes of his particular Countrey.

Baro. de Tan. Berg. refer. Hyard. in Leuxiris.

A Baron described.

But in this our Common-wealth of *England* (me thinkes) a Baron may be described in a generality answerable to every of the speciall kinds thereof in this maner. A Barony is a dignitie of Nobilitie and honour next vnder the Viscount, and above the Banaret and Vavasour with the title of Lordship holding the same place with vs as did the *Patritij* or Senatour under the Romanes.

Romanes. For the better understanding whereof consider that *Nobilitas* generally signifieth matter of note, but specially it is applyed to expresse the reward of vertue in honourable measures. *Sc. generis claritatem* of which there are two kinds *Nobilitas major* (viz) a Lord at least, & *Nobilitas minor*; but our english tongue expresseth the higher kinde. A Barony therefore is a dignity of nobility and honour. A dignitie of Nobilitie to exclude all other kinds of dignities, of honour, to exclude the lesser kind of Nobilitie wherein Gentlemen are comprehended. Dignities of Nobilities are with vs of two kinds some are dignities of Nobilitie, honour, parcell of the name of those that are innobled thereby, so that in publicke proceedings of law it is parcell of their name, and may not more be omitted then their surname, such are the Nobilitie of Dukes, Earles, Vicounts. Others are Dignities onely, and not parcell of the name, and so is the Baron, and therefore if an Action bee brought by or against a Baron, who

1.

2.

hath but a Barony onely, it is not requisite to make him Baron, which in all other Dignities being parcell of the name is otherwise most curiously observed, otherwise the Writ shall abate; Thus much of the Dignitie of a Baron, now of the Etimologie of the Name.

8.H.6. 10. 32.H.6.30 *Littlet.*

2. *The Etimologie of the name Baron.*

MAny Writs have laboured to yeeld the Etimologie of the name wherein following their owne fancy there hath beene bred much varietie of opinion, some men inducing the Greeke, importing Gravity, others have sought a Latine Author to father it upon, alledging *Cicero ad Atticum*, where they find printed in some Copies these words, *Apud Patronem & reliquos Barones te in maximam grã positum*, where in other Copies in lieu thereof is read *Barrones*, and so by others the same is acknowledged to be nothing but a corruption whereof *Alciatus*

Lib.4.

Alciat. lib. 5.cap.16. & 32.

Alciatus ſpeaketh, &c. And therfore *Raſius* calleth the word *Vaſſaſors & vaſſallos*, among the which they intended Barons to be included, *Vocabula illota*. Others would derive the word from a certaine war-like auncient people inhabiting ſome parts of *Spaine*, called *Barones*; or as *Strabo* and *Ptolomy* doe name them *Bárones*, whoſe habitation was ſcituate vpon the Weſt-ſide of the River *Euberus*, who guarded the perſons of the Romane Governours, as the Switzers are now vſed for the guarde of certaine Princes. Others derive the name from the manner of building of thoſe houſes that were given to Barons to be holden and were the head of their Baronies, *Quod erant ejuſmodi domus undiq; occluſæ & ſubſtructis turribus & baris*. Some thinke it to be an Hebrew name ſignifying mercenary ſouldiers, ſome would fetch it meerely from the Latine, *Barones tanquam pureshomines*; But the moſt probable derivation is drawne from the Northerne peoples language, which invaded the Romane Empire, among whom

Sim. Sbaldus in lexico juris, Ptol. lib 2. cap. 6. Io Brekins de conſuetud. gallorum.

Petr. Gregor. Syntax. lib. 6. c. 1.

whom a Baron signified a man of strength, as by the lawes of the Lombards, and as by the words yet remaining without much variation in every one of the said three tongues, The word *Varon* and *Baron*, is vsed in stead of the Latine word *Vir*, and with this agreeth parcell of the auntient law of *Canutus*, *Quod est summa census diversarum dignitatum si minoris Vironis, id est, Baronis dua libræ: si majoris* 4. &c. And therfore in the Lombards lawes, compiled by *K. Rotharis* the word Baron is thus vsed *si quis ex Baronibus nostris ad nos voluerit venire, securus veniat & illæsus ad suos revertatur.* And in those old lawes called, *Repnaria si quis hominem regni tabularium tam Barone qui feminam abstulerit*, &c. Where the word doth signifie the same that the word *Vir* doth in Latine; Therefore *Bracton* not vnfitly vseth it *sunt & alij potentes sub rege qui dicuntur Barones (hoc est) robur belli.*

Tit. 8 in al. lib. tit. 9. Tit. 60. 54.

Vir leges salvos: Bracton. lib. 2. c. 8.

The

The Antiquitie of the dignitie of Barons and the ſundry uſes of the name.

IT ſeemeth that the dignitie was more auncient then the name for in the auncient conſtitution feudall of the *Lombards*, there is not mention made of the name of Baron, howbeit the learned Interpreters underſtand that dignitie to be comprehended under *Valvaſores minores*, or *Valvaſini*, or *Valvaſores minimi*, being another kind inferiour to *Valv. majores*, which were alſo called *Capitanei* (*Barons.*) The like Dignitie before the Conqueſt, had thoſe that were called *Thanes*, of whom is mention made in the Lawes of K. *Ethelſton*, and of this there were two kinds *Thani Regis & Thani aliorum*, and therefore in the Records of Doomeſday in the deſcription of *Hertfordſh.* and therein of the Mannor of *Brackins* it is thus written; *Hoc maner' tenuel 2. taggas horum unus homo regis Edw. & alter Aſgari ſteleri.* This word *Thani* was diverſly uſed by the antient Saxons; Sometimes they ſignified

Lib 2 feud. titulo 10. lib feud. 1. 16. lib. 1. feud 1. 7.

Lamb. de regimine Saxonum, fol. 71.

Lamb. de regimine Saxon. fol. 71.

Record of Doomesday Hertfordſhire.

nified thereby a Noble man, as by the Baron, sometimes a freeman, sometimes a Magistrate, sometimes a servant attendant upon a mans person, which they signified by the subscription of the antient regall Charters by the word Minister, as *Ego minister A.B. præsens auscultavi or interfui, or in inspexi* of the Kings *Thanis*. I find thus much written in the same Records, *Thanis vel Miles Regius dominicus moriens pro relevamento dimittebat regi omnia arma sua, & equum unum cum Cella, & alterum sine cella. quod si essent ei canes vel accipitres presentabunt regi ut si vellet acciperet.* That the like was done also by the Thanis of others, as of Noblemen, Earles, and others, appeareth by an antient *Saxon* Testament of one *Arfrie* an Earle, which is brought to light by Master *Lambert*, in the description of *Mepham* in the preambulation of *Kent* in those times. The *Thanis* were for the most part deemed Noble, and held one and the same dignitie, as the Barons doe. The word *Thanis* being usuall in that sence, not onely

onely among our Engliſh *Saxons*, but alſo with the *Scots* and *Danes*, as concerning the Scots *Hector* Poet writeth, *Malcolmum regem titulo Comitatum honeſtaſſe*, And as touching the *Dane*; the *Thanis* among them are yet in uſe, as *liberi Domini*, ſuch as are the Barons, by this it may appeare, that the name of Baron was not uſuall amongſt the ancient Engliſh Saxons, for that in the ſubſcription unto the graunts of Kings, whereunto with the ſigne of the X were ſubſcribed the names of all noble perſonages, as well temporall as ſpirituall, the ſaid word Baron cannot bee heard of, but in an antient Charter made in the name of *Zolpher*, ſometimes King of *Mercia*, unto the Church of *Peterborough*, having theſe words; *Præcipimus quod prædict. Monaſt. & dona ſua ſint habenda, &c. ab omni diminutione & exact. comitum, &c.* Likewiſe to this effect have I ſeene in an old booke belonging to the Monaſt. of *Weſt. Edg. Rex concilio habito infra baſilicum Weſtm. preſidente eo cum filio ſuo Edw. & Dunſtano Archiepiſcopo, & univerſis*

universis Episc & Baronibus suis dictã Ecclesiã de Westm. renovavit. Nevertheless, the name of Baron was not much vsed within the Realme untill the Norman Conquest, after which it grew very frequent. In which time the notable cases, &c. of the Realme were debated before him and his Barons, and by them adjudged as by divers Monuments extant may appeare, whereof one is in this manner in the Record of Doomes-day, *Quidam Prepositi Brumanus eo tempore R. Edw. cepit consuet. de extraneis mercatoribus*, &c. Also 21. *Ed.* 1. doth set forth by exemplification an act of Parliament made in a cause between the Abbot of Saint *Edmondsbury*, and *Arfast* sometimes Bishop of *Thetford*, which See was afterwards translated by *Herbert* to *Norwich* concerning the Visitation of the said Monasterie, which Parliament was holden by the said King, the Archbishop of *Cant.* and all other the Bishops, Earles, &c. appeareth. Moreover in the Record of Doomesday, in the description of *Doneſh* is declared, that at the time of the said

Doomesday in *Canterbury*.

21. E. 3. 6.

Barkshire.

Record

Record there were at *Warham* of certaine Barons lands twenty houſes ſtanding and ſeventy deſtroyed, by which appeareth that both name and dignitie of a Baron was ſufficiently knowne in the time of the Conqueſt, and as touching the vſe of the name the word Baron ſeemeth to be frequented among the *Norman* Conqu. of this Realme. In lieu of the word *Thane* among the *Saxons*, for as they in a large ſignification did ſometime uſe the ſame to the ſence, *&c.* of a free man borne of free parentage, *&c.* and ſo did the Normans vſe it, and therefore called their free Citizens of their beſt eſteemed Cities and Burgeſſes, *&c.* by the name of Barons, and therfore the Citizens of *London* were called Barons *Lond.* in divers auntient Monuments, of whom alſo *Bracton* writeth, *Per Barones Lond.* &c. So alſo there are diverſe Charters wherin mention is made of ſuch like Barons as the Barons of *Warw.* in Doomſ-day, and in our time the Burgeſſes of the five ports are called Barons, and divers of the Nobility of Barons as well ſpirituall

Bracton 272.

tuall as temporall, did in antient time ſet in the Exchequer in judicature. Moreover as our *Saxons* had two kinds of *Thanis*; The like hath been obſerved of Barons among the Norman Conqu. for the Kings of this Realme have had their immediate Barons being the Peeres of this Realme: ſo certaine other Noblemen, eſpecially the Earle *Palatine* and Earle Marchers, whoſe Counties have confined upon the coaſts of the enemie, have had under them a kind of Barons, as namely under the County *Palatine* of *Cheſter* were theſe Barons, the Barons of *Hatton*, *Monbatte*, *Mulbanke*, *Shipbrooke*, *Malpas*, *Maſy*, *Kinderſton*, *Stockport*, *&c.* The Earledome of *Pembrooke*, being firſt erected by *Arnulphus Mountgomery*, that conquered ſome part of the County, and therefore the Earle thereof being an Earle *Marcher* had alſo under him his Barons, for it appeareth by the Parliament rolles 18. *E.* 3. that the Baronies of *Haverford*, *Cammois*, *Rochie*, and *Caſtlegoton*, were antiently belonging to the Juriſ-

Fleta, lib. 2. cap. 24. the judges of that Court have been from antient times, and yet are called Barons of the Exchequer.

7. H. 6. 35. 17. E. 3. inter placita. 18. E. 2. Aſſiſ. 30. Camois.

Iuriſdiction of the Earledome of *Pembrooke*, and had their Chancery and Seals as other Barons upon the Marches vſed to have. Hereof alſo it followed not onely in this Realme, but alſo elſe-where, that Earles had under them ſuch as they called their Barons, who held under them lands in Knights ſervice and in the defence of their Lords, and therefore in the Regiſter of the Monaſt. of Saint *Iames* of *Northampton*, it is found that *Simon* Ea. of *Northampton*, did get and confirme unto the ſaid *Abbey*, *Omnia dona, &c. qua Barones ſui, &c. infra burgum & extra North. illis dederunt.* Many old Charters alſo are extant, whereby it appeares which now time hath worne out of memory, and yet the knowledge thereof ſerveth to good purpoſe, namely to reconcile the different opinion of ſome men concerning the law, for 20. *E.* 3. *Thorpe* holdeth opinion that none can hold *per Baron.* but of the King onely, and that no ſubiect can aliene his land to another to hold of ſuch *alienor per Baroniam*, which ſome Serjeants denyed,

20. E. 3. *Aſſ.* 122.

denyed, to the which opinion of Serjeants *Willy* and other judges agreed, Adding further, that before the statute of *Prerog. Regis*, those that held *per Baroniam* might aliene some parcell thereof to bee holden by other, since which is evident (saith he) in this that the antient Baronies doe consist most of services which began by occasion of such suites as aforesaid. The assertion of both the said Iudges is good law, for none can hold *per Baroniam* but of the *K. Qu. &c.* Monarchs of the Realme, And againe it is true that in some kind of feme a man may hold *per Baron.* of a subject but *diversis respect. ergo, distinguendū est*, None can hold *per Baroniam* as a Peere of the Realme, and in course of perfect Nobilitie but of the Crowne onely. For of this Bar. *Bracton* understandeth when he saith it is the strength of the Realme, and these Barons according to the law *Senderl*, are these, *Capitanei or Valvasor. Majores* there spoken of: for *Qui a principe vel ab aliqua potestate de plebe aliquare per feudum & vestitus, is Capitaneus appellatur*

2. E. 3. Ass. 124 Prerog. cap 7.

Lib 2. feudall. tit. 10

appellatur qui propriè Valvasor. majores olim appellabantur, and of the question arising concerning these Baronies, the Monarch of the Realme or the Iudges, for that those Barons are immediate *à Rege in feudali*, as for others they be Barons *ex similitudine*, and therfore those which in the said lawes feudall are called *Valvasores & Valvasini*, for the words are these, *Qui verò a Capitaneis antiquitus beneficium tenent Valvasores sunt, Qui autem a valvasoribus feudum quod a Capitaneis habebatur, similiter acceperint Valvasini, id est, valicas minores appellantur*, The vse of this division within *England*, hath beene in no other manner then this, The *Valv. majores* may be vnderstood to be our Barons and Peeres for in such manner the Interpreters of the law feudall have expressed the same. The second sort is the *Valv. proprie* of which degree *Bracton* also speaketh: *sunt & alij qui dicuntur Valvasores magni dignitat. Valvasor melius dici poterit quia vas fortitum ad valetudinem.* Howbeit the Civilians doe give another Etimologie in this manner.

Bract. lib. 2. cap. 8.

Shand Lexico in verb valve Pet. Greg. lib. 6. ca. 11. 13 E. 3. Chal 115.

ner, *Valvasor. quasi ad valvas stantes, id est, tanquam ad valvas tentorij dum sunt in bello excubantes ad quamlibet injuriam propulsandam*; And of these *valvasi*, which are properly the *Valvasi* indeed, mention is made 13. *E.* 3. For they may be impannelled in a Iury among the Knights where a Baron is party. The third sort called *Valvasini* in special name we have not in vse, Nevertheless they are in nature the same that we call Lords and proprietors of Mannors, who also in respect of their Tenants were oftentimes in antient remembrances called Barons, but (*abusive*) and their Courts, Court-Barons, for of these *Glanvill* speaketh, *Praterea Record. habeant minores Cur. de his quæ in eis facta sunt, &c.* Hence it is that these divers degrees have beene observed in forraigne Countries; By the French Constitution it is ordained, that *Si quis aut Vicecom. aut Baro voluerit fieri comes, necessariũ ducũt eum habere in sua ditione. 4. Baronias & tres castella. quarũ qualibet habeat saltem 10. Nobiles sibi subditos qui eum comitari possunt.* Again, in

Glan lib. 8. cap. 10. fol 64.

Pet. Ger. in lib. 6. cap 9. Ex

tit.

tit. comit. nullus transeat nisi habeat 2. Baroneas, & 3. Castellaneas aut saltem, 1. Baroniam & 6. Castellaneas vnitas & nomine feudi Possessat & investitas a rege sub uno titulo. In *Flanders* which was an Earldome of regall constitution there was in auntient time an Earledome the Ea. whereof was intituled *Comes Alestanus* the Earle of *Elston*, who although his jurisdiction was particular to himselfe from the Emperour, yet had he under him five Barons, the memory of which doth remaine; It hath beene heretofore a common received opinion, that every Earldome in times past had under it ten Barons, and every Baron seven Knights fees holden of him, and some are of opinion, that those which had foureteene Knights fees were usually Barons, but of that more hereafter.

edito regis gall. 17. Angl. 1579

Jac Mercant. Fland. 16. cap 1 de Aloste.

It resteth now for the more explanation of the use of the name *Baron*, that wee call to remembrance that which is before spoken, that the Custome of our Countrey is, that if a Baron be created an Earle; the eldest son

of the said Earle, in the life of his Father, taketh upon him the title of the Barony, although he want the priviledges belonging to a Baron. Lastly, that is not to be omitted, that by the generall name of the Barons of the Realme, wee doe understand the whole body of the Nobility, and hence it is that the civill warre concerning the liberties granted in the great Charter both in the time of King *Iohn*, and *H.*3. prosecuted by the whole Nobilitie some few excepted, are called the Barons warres; Thus much of their antiquitie, *&c.*

The true use of the name.

Having before shewed the severall uses of the word *Baron*, we are now to adhere onely to the proper signification thereof, whereby there is denoted to us an Honourable personage next under the Vicount, and therefore wee are to set forth a division.

3 kinds of Barons.

Barons honourable are of three kindes, by Tenure, by Writ, by Creation or Patent, as for the Baron by prescription they are all one with the

Barons

Barons by tenure, or those who antiently, and time out of mind have been called to the Parliament by Writ, and otherwise none.

Barons by tenure are those which doe any honour, *&c.* as the head of their Barony, *per Baroniam*, which is called *Graund Serjeanty*; These are of two sorts spirituall and temporall.

Barons by tenure 2. kinds.

The Barons spirituall *per Tenure*, are and were those Ecclesiasticall persons, which held the principall part of their spirituall living *per Baron.* and such were also of two kinds; first, the Archbishops and Bishops of this Realme, who doe hold the principall part of their temporalties *per Baron.* Secondly, such Abbots, Priors, *&c.* which were extinguished by comming to the Crowne by the Statute.

Spirituall.

Barons temporall are such as hold the chiefest part of their possessions, as some honour, Castle, *&c. per Bar.* of the Crowne, all which honourable Barons of holding their Baronies of the Crown were in antient time in respect of these their tenures called by the Monarch of this Realme to assist him

Temporal.

in counsell in Parliament.

But first it shall be requisite to prove every part of the division, namely of Barons by tenure, and first of spirituall.

It is evident, that the Archbishops and Bishops of the Realme in the Saxon dayes, as well during the time that it was divided into divers kingdomes, as also after the uniting of them into one Monarchy were called to the Parliament, not so much in respect of their tenure (for it was then by *Frankalmoigne*) but especially for that lawes are then most commendable, when they are grounded upon the law of God, and therefore our wise Ancestours called to their generall Counsell or *Wittenagemot* or Court of wise men, as they called it those principall persons of their Clergie, which by their profession, *&c.* might advise them to frame their lives answerably, *&c.*

Hist. Inguelf. Ab. de Croland. in subscrip. Chartre Bertosti regis, fol. 490 ibid. 492.

Nevertheless, shortly after the Norman Conquest, the Conquerour altered tenures, being before *Frankalm.* not without some complaint and

and griefe of the Clergie of which *Matth. Paris* thus writeth *An.* 1070. which prove that Biſhops then held *per Baroniam.*

Matt. Paris, fol. 6.

In the Conſtitution held at *Clarindon tempore, H.* 2. *Anno* 1164. which conſtitutions certaine recapitulations of the prerogative of the King and his people then ſought to be infringed by the Pope and his Clergie, it is thus expreſſed in the 11. Article, *Archiepiſcopi & Epiſcopi, & univerſa perſona regni qui de rege ten' in Cap. habeat poſſeſſion. ſuas de Rege ſicut* Baroniam, *& inde reſpondeant Juſticiarijs,* &c. *Regis & faciant omnes conſuet. regias, & ſicut cæteri* Barones *debeant intereſſe judicijs curiæ Regis cum* Baronibus *quouſque. perveniatur ad diminutionem membrorum vel mortem.* Here we ſee the preſence of the Biſhops in the Parliament in reſpect of their Baronies, *Quouſq; perveniatur ad diminutionem,* &c. For ever unto our times when queſtion is had of any attainder of any Peere in Parliament, they depart the higher houſe, and make their procurators, for by the Decrees of the Church

Called the Aſſiſ. of *Clarindō* in old Writers.

10. E. 4. 6. *De Rot. Parliamēt.* 11. R. 2. *anno* 9 *in turr. London.*

Church, they may not be judges of life and death.

Lib 9. fol 66. Of the Baronies of Bishops, and of their homage for the same; Thus writeth *Glanvill*, who *tempore R.* 1. was chiefe Justice, *Episcopi vero consecrati homagium facere non solent Domino regi etiam de* Baronijs *suis sed fidelitat. cum jurament. interposit. ipsi præstare solent; Elect. vero in episcopos ante consecrationẽ suam homag. sua facere solent.* Of these also Bracton saith, *Si autem terra data fuit Eccleſiæ. Cathedral. vel conventuæ non jacebit assisa utrum quamvis in habitam*, &c. *Eleemosinam.* Of the which hee reciteth a Judgement, *P.* 15. *H.* 3. which was given in a Writ of Errour upon a Judgement in Eire betweene the Prior of *Lewes & Gilb. de Aquila*, and he yeeldeth the reason thereof.

Bract lib 4. cap. 2. 287.

Bract. lib 5. cap. 23. fol. 427. Againe, he in another place, searching out the reason why the certificate *Excommunicat. spiritualium*, any spirituall Judge other then the Archbishops and Bishops of this Realme is not by any Law to be admitted, hee yeeldeth this reason so, that none of those

those other ſpirituall Judges are compellable to admit the action as are the the Archbiſhops and Biſhops, *Quia rex in epiſcopis coercionem habet propter Baroniam*, Meaning thereby that upon their contempt the King doth ſeaze their temporaltie. Likewiſe, about 46. *E.*3. the Biſhop of *Chicheſter* Leaſed for life a Mannor parcell of his Barony with licence of the King, this alienation was a forfeiture becauſe parcell of his Barony. 46.*E.*3. *forf.*8.

Many more authorities might be cited out of Records and bookes of Law, in regard whereof they have in antient time been named Peeres of the Realme, and have enjoyed other the priviledges that Peeres doe the triall by Peeres (onely in matters of Treaſon or miſpriſion, *&c.* excepted) wherof *Stamford* giveth the reaſon, *Non ratione Nobilitatis ſed ratione officij.* Another reaſon why Biſhops are not tryed by Peeres as other Peeres, becauſe they cannot paſſe upon the life of any man, being thereunto forbidden by, *&c.* and therefore the Peeres cannot trie them, for that this kind of tryall 13.*E.*3. *Chal.*115. *enqueſt.*43. 29.*E.*3.42. 39.*E*3.30. 31.*E.*3.94. 43.*E.*3. 21.*E.*4 77 27.*H.*8. 27.*H.*8. *enquiſt.*99. 2.*Mar.*46.

35.H.8. *Triall.* 142. *Stan.* 1536. 1.H.4. 13. H 8 11.

triall should be mutuall if the offence give occasion, insomuch that their censure is upon their honour without oath, *&c.*

21.E.3.88 36.H.6. 7.H.6 108 7.H.4.2. 26.H 8.7. 21.E.3. n.50.

The like of those Abbotts, Priors, *&c.* which held some part of their land *per Bar.* who were also called Peeres of the Realme, therefore no Capias against them, and therfore some of them that held not *per Bar.* being summoned to the Parliament upon their petition were discharged, whereof there are some presidents extant.

The Abbot of Saint *Iames* neere *Northampton*, in 12.*E.*3. was summoned to the Parliament, which was the same yeere holden at *Yorke*, who because neither he nor his predecessors were summoned, and because he held onely by *Frankalm.* hee by his Procurator exhibited his petition to the Lord Chancellour a monument whereof I have seen in this mãner, *Abbas Sancti Iacobi North. Irrotul. de novo in Cancell. dom. Regis inter citand. ad Parliamentum & non tenet per Baroniam nec de rege in Capite sed tantum in pura.*

pura, &c. Eleemosinam & nec ipse nec predecessor. sui unquam in Cancellaria irrotulat. fuerunt nec ad Parliamentum citat. huc vsq; unde idem Abbas petit remedium. Ad cujus billam execut. Dominus Cancellar. cum suo Consilio de Cancell. ordinavit quod nomen prædict. Abbatis a registro Cancel. deleretur & ita pluribus circumspect. idem Abbas est absolutus; facta est hæc excusatio per visum Domini Iohannis de Oth. Episcopi Elien. Cancel. domini regis, domini Willielmi Dirmins tunc cust. rotulorum & al'.

Out of the Register booke of St. *Iames* of *Northampton.*

A like Petition was made by the Abbot of *Leicester* unto *K. E.* 3. and thereupon obtained a Writ of discharge in this forme; *Edwardus Dei gratia* &c. *Salut. supplicavit nobis dilect. nobis in Christo Abbas de Leycest. in Abbatia sua predict per Robert. Fits, Roberti de Mellent dudum Com. Leyc. fundata fuisset in purã eleemosinam, & advocat. sibi preornat. ad manus Domini Hen. quondam regis Angl. proavi nostri per forisfacturam, Simon. de Monte forte tunc Com. Leyc. & proin ejusdem darent, idemq; Abbas aliq; terras*

Ex. rot. Patent. 26 E. 3 pars. 1. M. 22. in turri London.

terras ſive tenta de nobis per Baron. ſive alio modo non tenuit per quod ad Parliamentum venire teneatur, nec aliquis predeceſſorum ſuorum ante 49 annum Domini proavi noſtri part. forisfacturam dicti Simonis quo anno omnes Abbat. & Priores regni noſtri ad parliamentum, proavi noſtri tunc tenturum & voluntarie ſummoniti fuerunt ſummonit. extiterit velimus ipſum Abbat. de hujuſmodi adventu ad Parliamentum facere exonerari, & quia viſis chartis & confirm. de terris, & tentis eidem Abbati dat. & conceſſis in Rot. Cancell. noſtri irrotulat. compertum eſt quod dicta Abbat. pradict. Roberti FitzsRobert Com. Leyc. fundat. erat in pura elemoſina, & non invenimus quod pradict. Abbas aliquas terras de nobis tenuit. per Baron. &c. nec quod predeceſſor. ſui ad alia parliamenta progenitorum noſtrorum ante pradict. 49. Annum dicti proavi noſtri, aut poſt modum continue, ſed vicibus interpellatis ſummonit. fuerint nolentes ipſum Abbat. indebite ſic vexari Conceſſimus pro nobis, &c. quod idem Abbas. &c. de veniendo ad Parliamentum, &c. quieti ſint,

ſint; Ita ſemper quod dictus Abbas, &c. in procurator. ad hujuſmodi parliamenta per clerum mittenda conſentient, & ut moris eſt expenſis contribuant eorundam In cujus rei Teſt. &c. 15. Febr. Anno 26. & Franc. 13. per Petition. parliament. Whereby it appeareth, that Barons by tenure are ſummoned in reſpect of their tenure.

As touching the temporall Barons by tenure mention is often made of them in the yeare-booke Records, &c. as *Glanv. lib. 9. cap. 6. Baroniam retinet rex donec hæres, &c.* Which reliefe for Baronies was at that time incertaine, and rentable at the Kings pleaſure, but ſuch incertainty of reliefe was brought to certaintie by the Statute of *Magn. Chart. ſi quis, &c. de Comitat. integro per C.l. hæres Baron. per C. mercas, hæres Mil. per feodo mil. C. ſolidos.* Thus much of the temporall Baron and his reliefe. *Glan. 9. c. 6* *Mag Char. cap. 2.*

In 3. *H.* 3. there was agnized an auntient perogative belonging to the Crowne and uſuall from the Conqu. in theſe words and ſo reported by *Fitz-Herb. Quod ſi aliquis Baron. obijſſet, &*

& non haberet hæredem niſi filias & primogenit. filia marit. ſit in vita patris Rex daret poſt natum filium quod remaneret in hæreditat patris, &c. Bracton writing of eſſoignes delivereth this learning, that if any Baron that holdeth *per Baroniam* hath his abſence excuſed by eſſoigne, he which caſteth ſuch eſſoigne ought to find ſuretie that it is true, but in the caſe of common perſons that ſhall reſt upon credit, and the integritie of the Eſſoigner; His words be theſe, *Ideo ne eſſoniator*, &c. by which appeareth that there are temporall Bar. by tenure.

Bract. lib. 5 Tract. 2. cap. 2. fol. 337.

48. E. 3. 30.

Now let us deſcend to the other authorities Sir *Ralph Everdon* Knight, being one of the Barons of the Realme *tempore E 3.* was impannelled in a Jury to their priviledge, and therefore for his exemption procured a Writ directed to the Judges of *C.B.* before whom the Jury was impannelled, by which they were commanded to diſcharge the ſaid Sir *Ralph*, whereupon *Belke* chiefe Juſtice of *C.B.* examined him whether he held *per Baroniam* or no, *&c.* and whether hee had come

Reg. 179. 14. & 15. H 8. 35. H. 6. 46.

come to the Parliament as a Baron, to which he anſwered that he held by a certaine part of a Baron. and that his Auncest. had likewiſe ſo done vpon good advice, by means whereof he was diſcharged, in which caſe is proved that there are Barons by tenure, and that they in regard of their tenure ought to be ſummoned.

In the Parliament 23. *H.* 6. there was a controuerſie betwene *W. E.* of *Arundell*, and *Tho. E.* of *Devon*, for their places in the Kings preſence as well in the Parliament, *&c.* whereupon there were diuers writings, *&c.* declared betweene them in the ſaid Parliament; the conſideration whereof was cõmitted by the King to certaine Lords of the Parliament to decide the ſaid title with all incidents thereto belonging. Nevertheleſſe it being not accordingly performed and the ſaid controverſie remaining vndecided in the next Parliament 27. *H.* 8. the ſaid K. was pleaſed that the Iudges ſhould examine the ſaid matter, who having conſidered the allegations of either part, and alſo an

Inter. rot. Parliamen. 27. H. 6.

act of Parliament made 11. *H.* 6. concerning the same in the behalfe of *Iohn E.* of *Arundell* decided; his Ancestors they certified, first, that the controversie was never matter of Parliament 2. that the said act wherby it was ordained that the said *Iohn* should have his seat in the Kings presence as well in Parliament as elsewhere as *E.* of *Arundell* there was no mention made of his heires but of himselfe. 3. That to the castle, *&c.* of *Arundell* the name, *&c.* of Earle then was, and time out of mind had beene vnited and annexed, and by reason thereof the said *E.* did hold that name and not by creation, all which being so certified it was enacted that the said *W. E.* of *Arundell* should retaine his prehemience by reason of the castle as worshipfully (for so are the words of the act) as any of the *E.* of *Ar.* above the *E.* of *Devon*, *&c.* saving alwayes to the said *E.* of *Devon* his lawfull suite to the King in his high court of Parliament for his right, by which President we do plainly see that the dignitie of that Earled. was *annexa feodo*, and

and an Earldome by tenure, in regard of which the Earles thereof have had their place in Parliament, from whence may be deduced that the like may be obſerved of Baronies by tenure as of this *E.* by tenure I would wiſh thoſe that denye Baronies by tenure to conſider the ſtatute of *Weſt.2. cap* 42. where the Fees of the *E.* Marſhall and Lord Chamberlaine are expreſſed, which are to be taken by them vpon the homage of euery Baron by tenure where he holdeth by a whole Barony or by leſſe, And leſt any ſhould thinke that this ordained by the Statute ſhould concerne any other Marſhall or Chamberlaine, *Fleta* will put him out of doubt, which applyeth them to this purpoſe. *Fleta. Lib. 2. cap. 5.*

But ere wee proceed further there ariſeth a Quere.

If a Baron by tenure grant the honour holden by Barony, whether shall such grantee have the said dignitie or otherwise?

Argument ex parte neg.

THey which deny Baronies by tenure doe vse this as their principall reason, first, if there be any, then the Grantee of them must hold by the same tenure as their Feoffer, but that was *per Baroniam*: therefore. And if such Grant bee made to persons ignoble, they then should bee Noble which were absurd.

1ª 10. 2. ca 1. Qu. emp. terrar.

Ratio 1.

Secondly, it is very evident that many antient Mannors, which in antient time were holden *per Baron.* are now in the tenures of meane Gentlemen, who may not dare to challenge it.

2.

Thirdly, some antient Barons are which have sold those Castles, *&c.* and yet retaine their dignitie, and have been, and are summoned to Parliament notwithstanding.

3.

Distinctions considerable.

For the better answer, it shall bee convenient to exhibit certaine necessa-

ry

ry distinctions and thence to draw infallible distinctions, and then Authorities and Presidents.

First therefore if a Baron by tenure doe aliene the same, either he doth it without licence, or else with licence obtained. If without Licence, then the Conclusion is certaine that it is forfeited, and to be seized to the King, and the Dignity extinguished in the Crown from whence it was derived.

Distinct. 1

The conclusion.

The reason is out of *Bracton*, because Baronies are the strength of the Kingdome, and if they should be aliened without consent of the Soveraigne, base persons innobled without desert, *&c.* for where the thing so aliened is an Honour, it differeth much from the ordinary tenure in Cap. whereof if the Tenant make alienation without licence, he is onely to make a fine by the Statute. For authoritie. *Glanvill* saith, *Notandum est quod nec Episcopus, nec Abbas quia eorum Baroniæ sunt de Eleemosina Regis non possunt de Dominicis suis aliquam partem dare ad remanenciam sine assensu, & consensu Domini Regis.*

50. E. 3 c. 10.

Mag. Char. cap 31. Glanv. l. 7. cap. 1.

20.*Aſſ.*18 20 *E.*3. *Aſſ.*122. & 224.

In 20.*E.*3. certaine land being parcell of the Baronie of *Brenbur* was aliened by *W. de Bruce*, the Baron thereof without licence, and in the argument of a Caſe concerning the ſame, *Greene* ſaid that parcell of a Baronie, *&c.* held in chiefe, cannot bee aliened without his Licence. Againe, 46.*E.*3. it was found by Office, that *W.* Biſhop of *Cheſter* had Leaſed for life to *Io. Peſton* a Mannor, parcell of the Baronie without Licence, and reſolved that it was forfeited, but by mediation of the ſaid Counſell, the Biſhop ſubmitted and made a fine, and ſeverall *Scire fac.* iſſued againſt the perceptors of the profits to anſwer the King. Thus much of Alienation without Licence.

46.*E.*3. *Forf.*18.

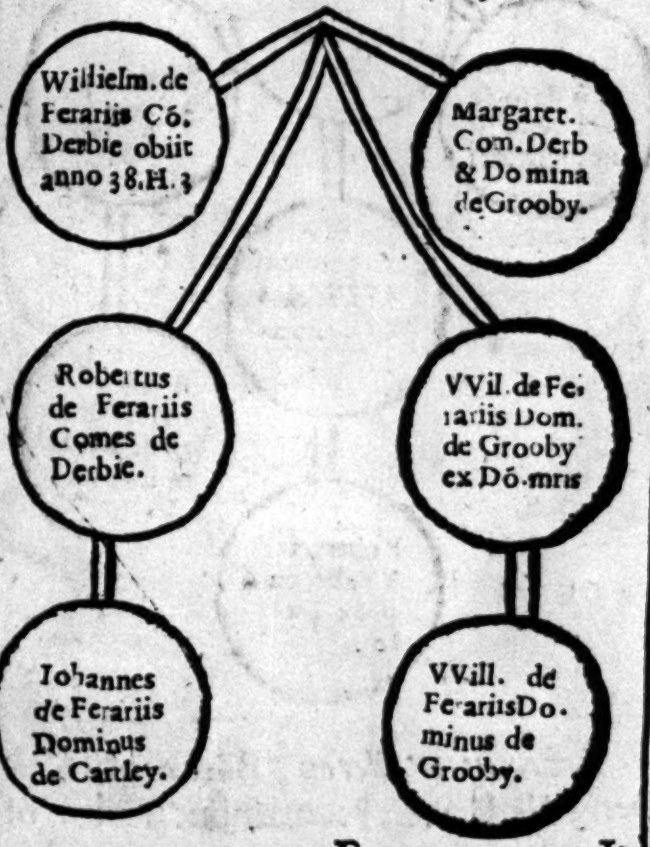
*Diſtinct.*2.

But of the other part, if a Baron by tenure doth aliene by Licence wee muſt diſtinguiſh, for it is either made for the continuance of his Barony, *&c.* or elſe for ſome other conſideration.

That if any ſuch Alienation be made for the continuance of the Barony in the name, then have the iſſue male with the Caſtle, *&c.* retained the Dignitie

nitie of a Baron, and hereof have the Heires generall, or next Heires females beene excluded; And for proofe of this assertion many antient Presidents may be produced, seeing they have happened almost in every age for three hundred yeares space, of which some certaine doe ensue.

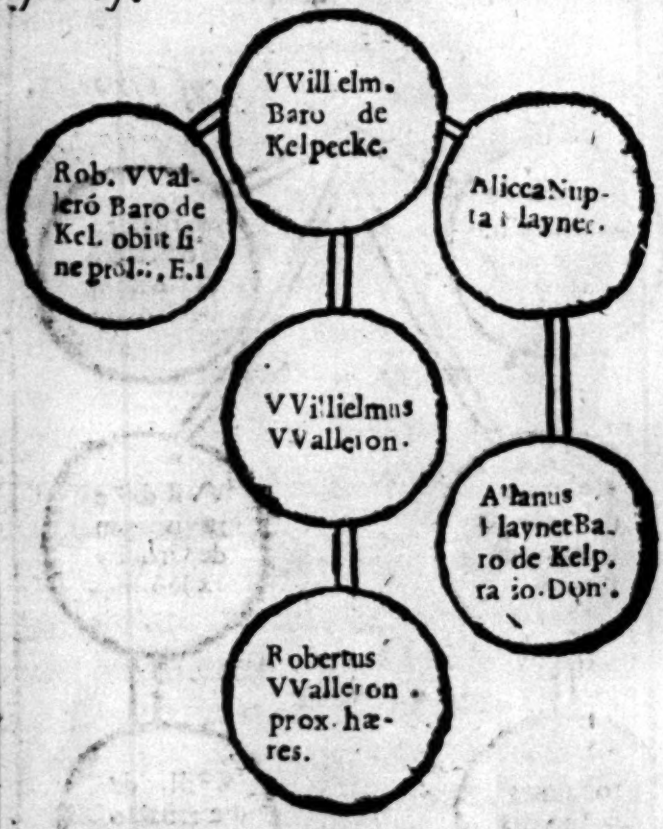
Barons of Grooby.



Barony of *Grooby* in *Com. Leycest.*

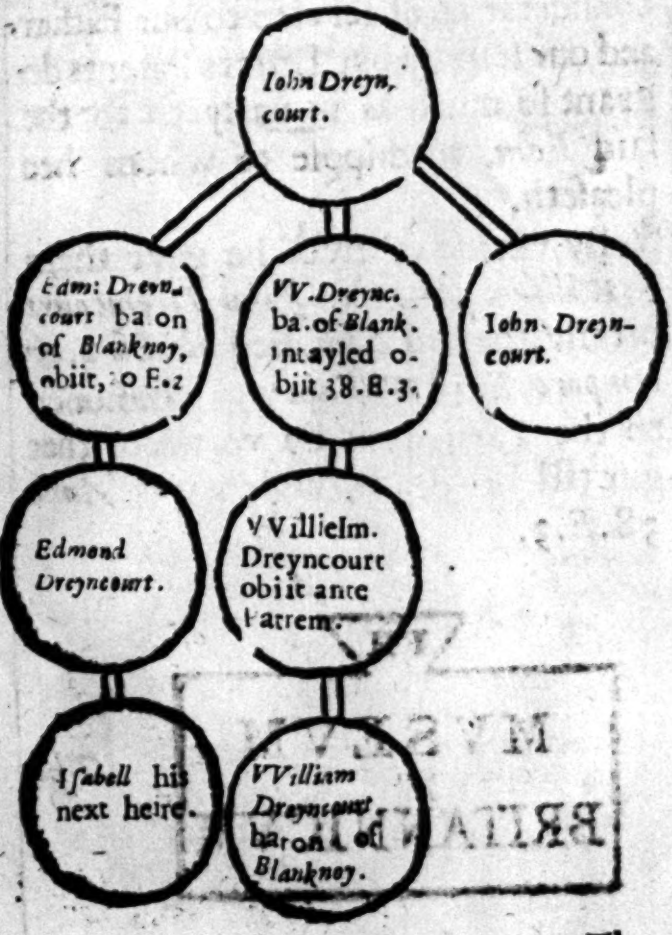
It appeareth by an Office found after the death of *William, de Ferarijs*, Lord of *Grooby* 23, *H.6.* that *Margaret* Lady of *Grooby*, gave to *William Ferarijs* her second sonne in taile the Mannor of *Grooby*, by vertue whereof hee and his Heires were Barons of *Grooby*.

The Barony of *Kelpecke Com Heref. Temp. E.1.*



Robertus Walleron, Baron of *Kelpecke* died, 1. *E.*1. without Heire of his

his body, and *Robert* Sonne of *William*, Brother of the ſaid *Robert*, was his next Heire, yet he gave to *Allen Playnell* the Lordſhip of *Kelpecke*, &c. in taile, by force whereof he was Baron, and ſummoned to the Parliament, and he died *Anno* 27. *E.* 1.



The Barony of *Plankenoy in Com. Lincolne.*

Temp. E. 2.

The

Pat. Anno 10 E.2. part 2. num. 13.

The King to all, *&c.* greeting; Know yee, that whereas lately our welbeloved *Edm. Dreincourt* considered, that both his firname, and also his Armes after his death in the person of *Isabel Dreincourt* should bee quite blotted out of memory, most earnestly desired, *&c.* To whose request in consideration of service to our Father and our selfe by our Letters Patents do grant so much as in us lyeth to the said *Edm.* to dispose to whom hee pleaseth.

Esch. 12. E.3. Sum. Parl. 7. E.3. Clauſ. dors. part. 25.

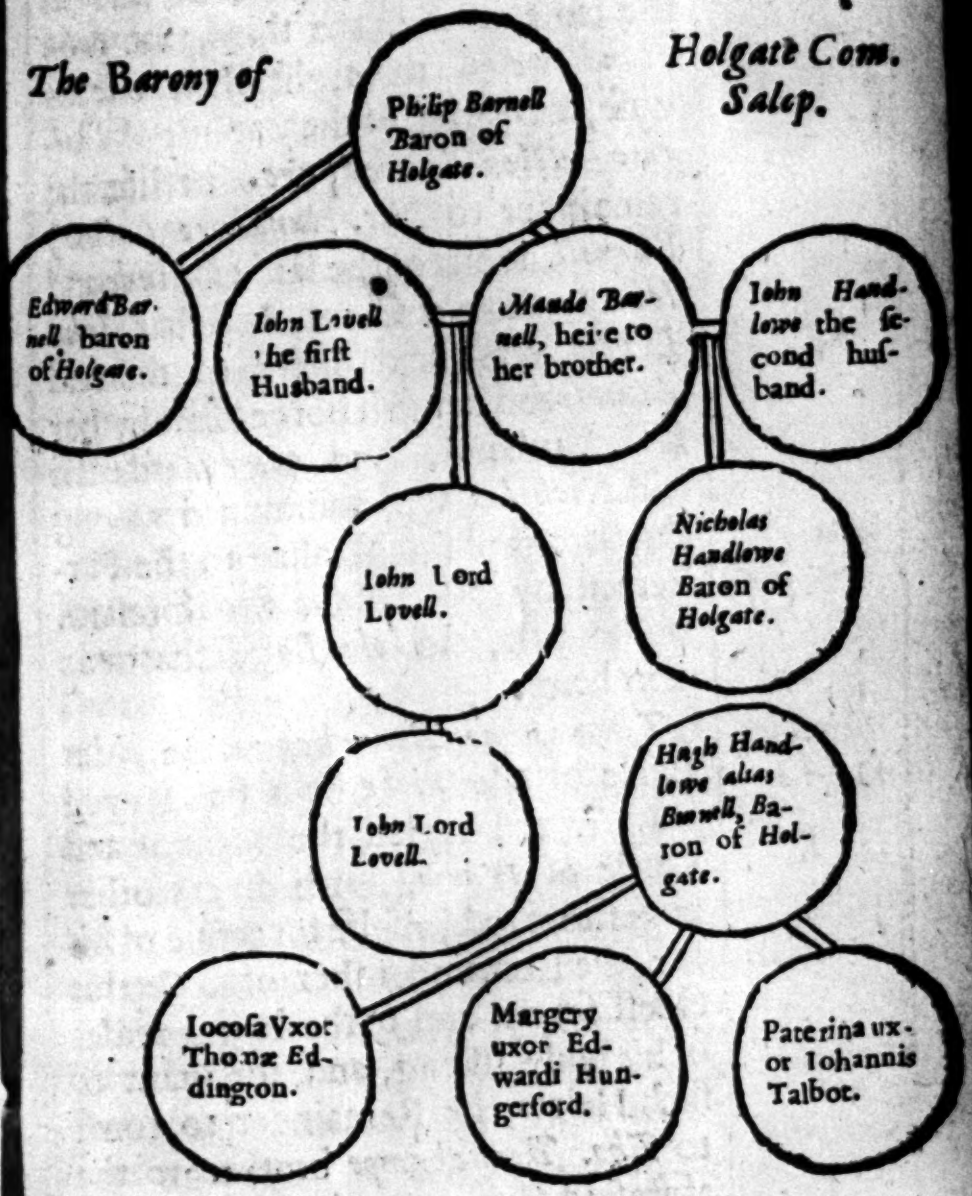
By vertue whereof he gave them to *William* sonne of *John Dreincourt* in taile, the said *Edm.* died *ult. Ed 2. & tempore E.3. William* was summoned to the Parliament by vertue of that gift till his death, which was *Anno* 38. *E.3.*

FH

MVSEVM BRITANNICVM

The

The Barony of Holgate Com. Salop.



It

It appeareth by divers officers in the time of *Ed.* the third, that *Iohn Handlowe* in the right of *Maude* his wife, was ſeized of the Mannor of *Hoigate. Acton Burnell, &c.* for life, the remainder to *Nic. Handlowe (alias) Burnell*, ſonne of the ſaid *Maude* and *Iohn* by a fine in Court, And that *Iohn Lovell* was next heire of the ſaid *Maude* and her firſt borne ſonne by her firſt Husband. And afterwards the ſaid *Nicholas* was ſummoned among the Barons of this Realme to the Parliament by reaſon of the fine aforeſaid. And not the ſaid *Iohn Lovell* that was next heire.

Eſch Anno 43. Ed 3.

Thomas de Beauchampe, the elder Earle of *Warwicke*, by a fine levyed 18. *E.* 3. intayled the Mannor and Caſtle of *Warw.* with divers other poſſeſſions to himſelfe for terme of his life, the Remainder thereof to *Guy* his eldeſt ſonne, and to the heires males of his body iſſuing, and for want of ſuch Heires, the Remainder to come to *Tho. Beauchampe* brother to the aforeſaid *Guy*, and to the Heires males of his body, *&c.* And after the ſaid

Guy

Guy died without Heires males of his body, leaving two Daughters and Heires living. Afterward the ſaid Earle died, and the ſaid *Thom.* the ſonne entered into the Caſtle, and Mannor aforeſaid with other the premiſſes and was E. of *Warw.* by reaſon of the intaile aforeſaid, notwithſtanding that *Katherine* Daughter of *Guy* next heire to the ſaid *Tho.* the eldeſt was living thirty yeeres after his death.

Richard Earle of *Arundell* by a fine levied 21. *Ed.* 3. intayled the Caſtle towne, *&c.* of *Arund.* to him and the Heires males of the body of *Elinor* his wife, by vertue whereof *Iohn Matravers* was E. of *Arun.* after the death of *Tho.* the Earle, who died without iſſue male although his Siſters poſſeſſed divers lands whereof he died ſeized in fee. *Eſch. Anno 9. H. 5.*

Thomas the elder, Lord *Barkeley*, was ſeized in Fee of the Caſtle of *Barkely* and mannor, *&c.* And by a fine levied in 23. *E.* 3. he intayled the ſaid Caſtle, *&c.* to himſelfe for life, the Remainder to *Maurice* his ſonne in taile *Eſch. 5. H. 5.*

taile with other Remainder as before, which ſaid *Maurice* had iſſue *Tho.* Lord *Barkley* and Sir *Iohn*, which *Iohn*, died in the life of his Brother, leaving *James* his Sonne and heire living, after the ſaid *Tho.* died 5. *H.* 5. leaving *Elizabeth* his daughter and heire married to *Richard* Earle of *Warw.* after whoſe death *James* the Nephew entered into the ſaid Caſtle, *&c.* and was ſummoned to the Parliament as Lord *Barkley*.

Som Parliament. 9 H. 5.

Eſch. 5. H. 6.

Tho. Lo. de la Ware died ſeiz:d in taile by reaſon of a fine levied in the time of his Anceſtors, of the *Baronie de la Ware* with divers other lands in other Counties and died 5. *H.* 6 without iſſue; And *Reginald Weſt*, Knight of the halfe blood was next Heire, by reaſon of the intaile, And was ſummoned to the Parliament by the name of *Regin. Lo. de la Ware* Knight, although *Iohn Griffeth* was heire of the whole blood.

Sem. Parliament. An 7. H. 6

Eſch. 9. H. 6 & 20. H. 6.

Iohn de Vere, E. of *Oxford*, ſeized in his demeſne as of fee taile to him and to the Heires males of his body iſſuing of the Honour and County of *Oxford*,

Oxford, with divers other lands *Ao.* 18. *H.* 8. died without Heires of his body, and his three ſiſters (viz.) *Elizab. Vrſula* and *Dorothy*, were his next heire generall, but *Iohn De Vere* next heire male, was E. of *Oxford*, by reaſon of the ſaid intaile, and none of the ſaid three Heires obtained the dignitie.

William, Lord *Paget*, of *Bewdſert*, was ſeized in fee of the *Baronies* of *Longden* and *Haywood*, and of, and in the Mannors of *Bewdſert Longden*, *&c.* and being ſo ſeized by fine, 1. *Mar.* intayled the Mannours and Baronies aforeſaid, to him and the Heires males of his body iſſuing, and after *anno* 5. *Eliz.* died leaving *Hen.* his Son next heire male, which *Hen.* entred into the Baronies and lands aforeſaid, by vertue of the aforeſaid fine and died thereof ſeized 11. *Eliz.* Leaving *Elizabeth* his onely Daughter and heire, after whoſe death *Tho. Paget*, brother and heire male of the ſaid *Hen.* entred into the Baronies and Mannors aforeſaid, and was ſummoned to the Parliament by vertue of the aforeſaid fine.

Eſch. Anno 11. *Eliz.*

Robert

Esth.6. Eliz.

Robert le Ogle intayled the Mannors of *Bothall* and *Ogle*, with divers other Mannors, *&c. Com. Northumb.* to himselfe for life, the Remainder to the Heires males of his body, and tooke to his first wife *Dorothy Witherington*, by whom he had issue *Robert* his eldest sonne, and *Margery* his daughter married *Gregory Ogle* of *Chippington*, and the said *Rob.* after the death of his first wife married *Iohan Ratliffe*, by whom he had issue *Cuthbert* his second sonne and died, after whose death *Robt.* the Sonne was Lord *Ogle*, and from him, to *Cuthbert* brother of the halfe blood, by vertue of the intaile, and not vnto *Marg.* nor *Cuthbert* her sonne of the whole blood.

Bro her of the half blood.

3. Conclusion.

Moreover thirdly, if a Baron by tenure doth Aliene by Licence to a meere stranger upon consideration, or, *&c.* if such Alienee be nobly descended in such cases, after such alienations, such Alienee hath borne the name and dignitie of a Baron, in respect of such Barony so aliened; And if he had no Dignity before, hee in respect of that hath beene summoned to the

the Parliament, and enjoyed the Barony hereof, are Presidents extant.

Maude, Countesse of *Angiers* and *Northumb.* Heire of the Barony of *Cockermouth*, after the death of *Lucy* her Brother, who dyed without issue intailed the honour, *&c.* of *Cockermouth* to her selfe, and to *Henry Piercy* Earle of *Northumberland*, then her Husband, and to the Heires males of their bodyes, upon condition that that should beare the Armes of the said Earle which are, *Or a Lyon rampant 6. quartered*, with the Armes of *Lucie* (*viz.*) *Gules 3. Lucies argent*, bearing the said Armes, so often as they shall appeare, and afterwards, *viz.* 22. *R.* 2. died without issue.

Esch. 22. *Ric.* 2.

Armes given.

Nevertheless the said Earle, and after him the said *Hen. Percy* his Son were Barons of the said Honour by the said assurance, and Sir *William Melton* Knight, Couzen and next Heire of the said Countesse never had the said Armes.

Amongst the Patents in the Tower, *Anno* 41. *H.* 3. it appearth that one *Herward de Mariſco* and *Rameta* his

Chart patent. in 41. *H* 3.

wife did grant unto *Simon de Mountfort*, then Earle of *Leyceſter*, the Barony of *Elinden* in the County of *Northampton*, which deſcended to the ſaid *Rameta* from *John de Veſcount*, which Graunt ſeemeth to be with Licence, for that the ſaid King doth by his Patent confirme the ſame, and further gave to the ſaid Earle and his Heires divers priviledges there.

Exchange of a Barony.

Alſo, this antient Charter following concerning the exchange of a Barony with the King, is worthy memory, which is, K. *Iohn* a°. 7. granted unto *Robert de Newbergh Fordington*, for the honour of *Burſtocke* in exchange, and granted that it ſhould be the head, and the chiefe of the Baronſhip, as *Burſtock* was aforetime, and that all Knights and others ſhould attend upon him, and his lands in *Fordington* as chiefe of his Baronſhip, as they aforetime were attendant upon *Robert Burſtock*.

By theſe Preſidents appeareth, that Barony by tenure is *annexa feodo*. So that the former queſtions are fully ſatisfied and anſwered (*viz.*)

1. That

1. That by alienation without Licence, the Barony is forfeited.

2. The heires Males have enjoyed them, and the Females excluded.

3. That the Alienee of such a Barony (nobly descended) is Baron.

But if such alienation with Licence be made to any person ignoble, though the burden of the tenure doth remaine on him for the K. best advantage, yet he may not take upon him the Dignitie without the Kings speciall favour upon his merit. Nota. 1.

Upon consideration therefore of these assertions all the former objections are answered, and as touching the first, it is answered by that which is last specified, that an ignoble Alienee may challenge nothing as a Baron by tenure.

In 11.*H*.4.2.6. in a Case concerning a Distresse, it is agreed that a Baron, *&c.* are not contributary for such lands parcell of their Barony, but for other lands they are; but there is question made, if one which is not Baron purchase a Barony, whether hee shall be discharged, which was not 11.*H*.4. 2.6.

worthy the questioning, if such a purchaser challenge by reason of his purchase place in Parliament; For as land holden by villein service, doth not make the owner a villein which doth purchase the same, although by tenure he must doe villein service; So land holden by Baron service doth not make the ignoble noble, though the charge of such tenure lay upon him. Yet if the King will give to any man ignoble in recompence of service any Castle, *&c.* to be holden *per Baroniam*, hee is forthwith noble, because hee draweth this Nobilitie from the fountaine without other Creation.

Qu. But a question by the way what yeerely revenue is sufficient for a Baron.

R. Diversitie of times hath brought forth divers determinations as touching the French constitution, there is an old Pamphlet wherein are these words; *Summon. debeant omnes Comit. & Barones, & eorum pares (viz.) qui habent terras & reddit. ad valentiam Comitat. vel Baron. integre, viz. 20. feod. Milit. quolibet feod. comput.*

Modus tenend. parliament.

ad

ad 12. librat. qua faciunt librat. vel ad valenc. 13. feod. Milit. & 3. part. Vnius feodi Milit. quolibet feod. computand. ad 20. librat. qua faciunt in toto 400. marcas, & nulli minores laici ſommon. debeant ad Parliament. ratione tenur. niſi eorum præſentia aliis de cauſis fuerit neceſſe (*cap. de Laicis.*) Others have eſteemed it to be foureteene Knights Fees, but that doth reſt wholly in the pleaſure of the King to judge.

The reuenew of a Baron.

Camden in Britann.

To the ſecond, it is true that antient Baronies which were holden *per Baroniam*, are now in the hands of men ignoble, but the reaſon and meanes whereby ſuch Mannors ſhould thus come to the hands of meaner perſonages are twofold; Firſt, becauſe they have beene aliened by Licence to them. Secondly, which was uſuall ſuch Mannors have upon divers reaſons come to the Crowne by way of Reverſion, Eſcheat or forfeiture, and after they were conveyed to others, reſerving other ſervices, ſo that it is no wonder that they be now holden in Soccage, *&c.*

Reaſon 2

1.

2.

3. *Object.* To the third Objection that antient Barons have aliened, *&c.* and yet retaine the degree, I answer, that it is true, yet it proveth nothing against the former resolution, therefore consider that they be either originally Barons by Writ or by tenure; By Writ are of two kinds, for either in such Writ whereby they or their Ancestors were at first Summoned, they were named only by their owne names; or else addition was given them from the principle place of their abode, either for some distinction to sever them from some Honour of the same sirname, or to give them such honourable title by addition of the place which was not holden *per Baroniam*, therefore if they alene it away, he may yet retaine the title because it was not holden *per Baroniam* but was given by this Writ of summons; Thus much of Barons by Writ.

But if Baron by tenure aliene to one ignoble by licence, and after the alienor be called by Writ, he is not any more a Baron by tenure but by Writ

Writ and may retaine the name of a Baron. Now of Barons by Writ.

A Baron by Writ is he to whom a Writ of ſummons is directed by the King to come to the Parliament to treat, &c. of the affaires of the Realme, the forme of which is, *Rex, &c. A. B. &c. de ſalut. quia de aviſamento conſilij noſtri pro quibuſdam arduis et vrgentibus nos ſtatum & defenſionem regni noſtri Angliæ & Eccleſiæ Anglicanæ concernent quoddam Parliament. noſtrum apud, &c. die, &c. teneri ordinavimus ac ibidem vobiſcum ac cum cæteris Prælatis, Magnatibus, & proceribus dicti regni noſtri colloquium habere & tractare vobis in fide & legiantia veſtra quibus nobis tenemini. firmiter injungend. mandamus quod conſideratis dictorum negotiorum arduitate & periculis imminentibus ceſſante quacunque excuſatione dictis die, & loco perſonaliter interſitis nobiſcum, ac cum Prælatis Magnat. ac Proceribus prædict. ſuperdict. negotijs tractatur eſt urum q̃ cõſiliũ impenſari, & hoc ſicut nos & honorem noſtrum & ſalvationem & defenſionem regni & Eccle. prædict. expeditio neque*

Barons by Writ.

A Writ of Sũmons.

dictorum negotiorum deligitis nullatenus omittatis; Which kind of Writ is as well directed to Barons by tenure and creation, as others which are onely Barons by Writ, which thereupon are to enjoy the dignitie, becauſe thereby they be aſſociated in Counſell with the King, *&c.*

Antiquity of Barons by Writ.

Touching their antiquitie and their firſt inſtitution I find little or no mention before *H.*3. his time, and therefore I conceive that either the firſt, or at leaſt the firſt frequent uſe of Barons by Writ was 49. *H.* 3. in caſe of neceſſitie and vpon lamentable occaſion of civill warre about the great Charter, of which rebellion *Simon* then Earle of *Leyceſter* was ring-leader; And therfore after divers fields fought at *Northampton*, *Rocheſter*, *Lewes*, &c. that of all was the καταστροφὴ, of that tragedie finiſhed at *Eveſham* where the ſaid Earle was ſlaine and thoſe Rebellious Barons overthrown; whereupon preſently iſſued the Parliament at *Wincheſter*, and after at *Weſtminſter*, where the ſaid Barons were to be attainted; Wherfore forаſmuch

asmuch as the number of the Barons which had continued faithfull was small, it was holden a necessary policie to supply the number, *&c.* vpon summons by Writ where were called all Abbots, *&c.* which held not by Barony, as others of the most worthy of the laytie not holding by Barony.

Note further, these Writs in forme of their directions are divers, some directed by speciall name of a Baron, as *Rex Baroni de Staffe. de Greystock, de Dudley*, others by the name of the partie, with addition of the place, as *Rex Iohanni de Straunge, de Knocking. Chr. Edm. Gray de Ruthen, Chr. Edw. Gray de Grooby, &c.* Naming the cheife Castle, *&c.* of such Baron. some others are named in this manner with the title of Lord, as *Iohanni Beauchamp Domino de Beauch. Milit. Iohanni domino de Clinton; Hen. Percey, domino de Poynings*; To others without additions, as *William de Lourt Milit. Seals. Devereux.*

Divers manners of directions of summons.

But the nature and qualitie of other Barons by Writ is aptly discovered

red by debate of a question concerning the continuance and descent of a Barony by Writ, which I divide.

1. First, whether a Barony by Writ may descend.

2. Admit it may then, whether it will to the heires females, there being no issue male.

3. Admit it doth then, whether the Husband of such heire female may assume the dignitie of a Baron in *jure uxoris*.

Quest. 1 Touching the first Question, it shall be requisite for satisfaction of all men, to alleadge such principall reasons as are wont to bee produced of both parts.

Object. Argument. ex parte negat. Nobilitie and honour given in respect of wisedome, *&c.* which are gifts of God, and personall cannot extend to others, for *privilegium personale personam sequitur & extinguitur cum persona*, but such is the dignitie of such a Baron, therefore, *&c.*

The second. Againe, if the calling to the Parliament by Writ, be the efficient instrument of Nobilitie in the Ancestor, then the not calling the heire is a losse of

of that Nobilitie. For admit ſome defects of nature in the heire as leproſie Ideocy, Frenzie, *&c.* he is made uncapable, and thereupon they conclude that it ſhall not deſcend.

Of the contrary part the affirmative is proved thus, Honour given in reſpect of wiſdome and vertue of him on whom it was firſt beſtowed is not onely a due reverence of him, *&c.* while he liveth, but alſo a memorable reward thereof to his poſteritie; ſee *Tully*, Therefore this kind of honour is patrimoniall.

Argument. ex parte affirm.

1.

Cicero pro Sextio.

If infamy of the anceſtor be a blot to poſteritie, as for it the law doth corrupt the blood for the offence of the Anceſtor, Reaſon would that the honour due to the Anceſtor, ſhould be likewiſe Honour to the poſteritie; for Contraries doe carrie their contrary in reaſon; For determination whereof it is to be noted that diverſitie of reaſon hath bred diverſitie of opinions.

2.

Some thinke it is not deſcendable vnleſſe the Heire be likewiſe called by Writ, and that then its an inheritance,

tance, but this is repugnant to the nature of a deſcent, which commonly carieth the patrimony deſcendable (by act in law) vpon the death of the anceſtors (to the heire) or not at all, Wherefore divers preſidents prove that this doth deſcend, and there needs not any word of heire in the Writ of Summons, onely there is a ſpeech of a ſpeciall Writ ſometimes directed to Sir *Henry Bromflet*, when he was called Lo. *Veſcy* by *H.* 8. in 27. yeere of his raigne, wherein there are theſe words inſerted, *Volumus tamen vos & haredes veſtros maſculos de corpore veſtro legitime exeuntes Barones de Veſcye*. Wherfore it is ever true that the heire of ſuch a Baron when he is called to the Parliament, that his deſcent of honour is thereby eſtabliſhed and approved by the gratious Iudgment of our Soveraigne: ſo it is alſo true that if it ſhall ſtand with her highneſſe pleaſure that ſuch heire ſhall not be ſummoned at all (for none come to ſo high a Councell except he be called) then that Nobilitie is much impaired and in manner extinguiſhed.

Teſte Rege apud weſt. 24 Iun. 27. H 6.

guiſhed in the cenſure of all men, for that it had no other originall, but by writ of Summons, for the which in the Judgement of the ſupreme Soveraigne, he is ſecluded. And thus much as concerning the firſt Article or point touching the deſcent in generall of this kind of Baronie.

As for the ſecond principall Point, whether the Barony by Writ may deſcend to the heire Male, it ſhall not be amiſſe likewiſe to view the reaſons of each part, that by the conflict of Argument the truth may the better be diſcerned. The ſecond point.

Thoſe which doe maintaine the affirmative part doe reaſon after this manner; In reaſon the ſexe of the Heire female ought no more to barre her of the dignitie then the nonage of the Heire male ought to barre him, although during his nonage hee be not able to doe the ſervice; But as the ſervice of the one is forbearing for the time; So the ſexe of the other may at all times be ſupplyed by the maturitie and ſufficiencie of her husband. *Ratio* 1. On the affirmative part.

Offices of Honour, which doe much import *Ratio.* 2.

import the publike weale being poſſeſſed by inheritance to deſcend to the heire female, if there bee no Neeces heire male. as the office of high Conſtable of *England*, which deſcended unto the Daughter of *Humfrey de Bohun* Earle of *Hereford* and *Eſſex*, as afore declared, the office of Lord Steward, deſcended unto *Blanch* Daughter of *Henry* Earle of *Lancaſter*, in whoſe right *Iohn of Gaunt* her Husband enjoyed the ſame. The like may be ſaid of the Office of Earle Marſhall which deſcended by an Heire female unto the houſe of *Norfolke*. All which Offices are as unfit to be exerciſed by a woman, as it is unfit for a woman to bee ſummoned to the Parliament as a Baron by Writ. And yet notwithſtanding the Law doth allow the Husband of ſuch a woman to exerciſe the Office of the one; And therefore by the ſame congruitie of reaſon ſuch Husband is likewiſe by law inabled to performe the other.

Ratio 3.

Many Noble houſes in *England* doe ſupport, and lawfully beare the Dignitie

nitie of Baronage unto them deſcended by women, of the which many are by Writ. Morover, in *France* the dignitie to be a Peere of the Realme (as *Opimus* by many examples proveth deſcendeth to the heire female for want of heire male.

Renatus: Copinus de dom. cap. H. 7. & 8.

The dignitie of Nobilitie deſcendeth likewiſe in *Spaine* vnto the female for want of Heire male which cuſtome not being onely currant in our neighbour countries, but with vs in an evident proofe in the caſe in queſtion.

Ratio. 1. on the Negat.

The adverſe part object that the writ of ſummons, *&c.* by which the Baron hath his originall, is to call him to be one of the members of that right high aſſembly of Parliament there to determine life and member, plea and right of land, *&c.* but theſe things are convenient onely for the qualitie of men, not to the other ſexe, *Ergo*, it not to deſcend to the heire female.

Ratio. 2

If it be anſwered that ſuch heire female be unfit in her owne perſon, yet may ſhe marry one ſufficiently able to excecute the ſame, this anſwer will neither ſatisfie nor ſalve the in-

con-

convenience, for admit ſhe were at age at the death of her Anceſtors vnmarried being in her owne choice, the great cauſes of the Realme ſhould be ſubject to her will in the choiſe of her Husband which were inconvenient.

Ratio.3. Thirdly if ſuch husband bee ſummoned the writ ſhould make mention thereof, for otherwiſe it may be taken that he was choſen in his owne perſon and not in her right, but ſuch a Summons wherein the wife was mentioned was never ſeene and if by a generall writ without mentioning his wife, hee is thereby made Baron in his owne right.

Obſer.1. Having heard the arguments on both ſides, place doth now require that we ſhould interpoſe opinion to compound this controverſie, This queſtion is ſomewhat perplexed by different Preſidents, for ſome Preſidents prove that Baronies by Writ have deſcended to Heires females, whoſe Husbands have beene called to the Parliament, whether in their owne or Wives right it matters not; but

but ſure it is that ſuch Marriage gave occaſion to the Summons, and ſuch Husbands and their poſterities beare the dignitie of the wives Anceſtors, for by this controverſie wee purpoſe not to queſtion the right of ſuch Noble houſes.

Secondly, wee muſt acknowledge that the Qu. is to ſummon to the Parliament whom ſhe pleaſe, and therefore whereas *Rodulph* Lord *Cromwell* being a Baron by Writ died having two Coheires, *Eliz.* married to Sir *Thomas Nevill*, and *Ioan* the younger to Sir *Humfrey Bourchier*, the ſaid Sir *Humphrey* was called to the Parliament as Lord *Cromwell*, and not Sir *Thomas Nevill*, who had married the eldeſt Siſter. *Obſer.* 2. Barony of *Cromwell.*

That if a Baron by Writ die, his Daughter, Siſter, or other collaterall Heire female being his Heire, and that no collaterall Heire male can challenge the ſaid Barony by any antient intayle or otherwiſe, ſuch claim by the Heire female hath heretofore beene allowed by the late right Honourable Commiſſioners in the office of the *Obſer.* 3.

Barony of *Dacres*,

Earle Marshall signified to the Queen, as upon the Petition of the Sister, and Heire of *Gregory* late Lord *Dacres*, deceased may appeare; In whose Pedegree it appeares, that *Thomas* Lord *Dacres*, had issue *Thomas* his eldest Sonne, *Ralph* his second, and *Humphrey* his third; *Thomas* died in the life of his Father having issue *Jone* his Daughter and heire, married to Sir *Richard Fines*, after *Tho.* the Grandfather died, whereupon *H.* 6. by Patent 7. *Novemb.* *Anno* 37. declares the said *Richard Fines* to be Lo. *Dacres*, but *tempore E.* 4. the said *Humf. Dacres* after the Attainder of the said *Ralph* & himselfe by Parliament 1 *E.* 4 and after of the said *Ralph* and reversall of the said act in 12. *E.* 4. the said *Humf.* challenged the Baronie, whereupon after it was controverted in Parliament, they submitted themselves to the arbitrement of *E.* 4. for performance whereof they entered bond, whereupon the King awarded vnder the privy Seale, 8. *Aprill Anno* 13. that the said *Richard Fines* should be reputed Lo. *Dacres*, and that

Award by King *E.* 4.

that he and his Heires of the body of the ſaid *Richard* ſhould retaine the ſaid place in Parliament, which the ſaid *Tho.* Lo. *Dacres* uſed, And that the heires of the body of the ſaid *Tho.* ſhould enjoy the Mannor of *Holbeck*. And that the ſaid *Humf. Dacres* ſhould be reputed, named, and called the Lo. *Dacres* of *Gilleſland*, And that hee, *&c.* ſhould keepe the place in Parliament next beneath the ſaid *Richard Fines*, *&c.* And that the heires of the ſaid *Tho. Dacres* ſhould have the Mannor of *Fethington*, *&c.* in Taile. And ſo note that *Gilleſland* the antient Barony remained to the heire male. *Nota.*

Obſerve alſo, that if any Baron doe die without iſſue male, and that by ſome ſpeciall intaile, *&c.* by which an heire female enjoyeth the inheritance of the ſaid Baron, ſuch heires females have beene called to the Parliament, and not the husband or iſſue male of of ſuch heire female, and this appeareth by a notable controverſie *Tempore H. 7.* between Sir *Robert Willoughbie* Lo. *Brooke*, and *Richard* *Obſer.* 4.

Barony of *Latimer.*

Nevill Lo. *Latimer*, for the Barony of *Latimer*, which in effect was, The ſaid Lo. *Brooke* challenged the ſaid Barony as coſen and heire of *Eliz.* his great grandmother, who was ſiſter and heire to *Iohn Nevill* Lo. *Latimer*, who died without iſſue, And hereupon exhibited a Petition to *H.* 7. in Parliament, whereunto *Richard* then Lo. *Latimer* was called to anſwer, who agreed the deſcent (*viz.*) that the ſaid *Eliz.* was married vnto Sir *Tho. Willoughbie*, ſecond Sonne to the Lo. *Willoughbie*, but *H.* 6. becauſe the ſaid *Iohn* died without iſſue, and that the next heire was female, did therefore call to the Parliament Sir *George Nevill*, ſecond ſonne of *Ralph* Earle of *Weſtmerland* to be Lo. *Latimer*, which *George* was grandfather of the ſaid *Richard*, namely Father of *Hen.* father to the ſaid *Richard*, in debate of which cauſe our Queſtion, *viz.* whether a Barony by Writ may deſcend vnto heires females was debated, and in the end adjudged with the ſaid *Rich.* which Preſidents doe afford vs 2. Iudgements in the point.

But

But here the former President of the Barony of *Dacres*, may be objected to incounter this conclusion: for whereas the heire female married to Sir *Rich. Fines*, he was Baron of *Dacres*, and *Raynolph* and *Humf.* the heires males placed below the said heire female by *H.* 6. and *E.* 4. *Object.*

This objection is easily answered, for although *H.* 6. did declare him Lo. *Dacres*, yet *Rand.* being heire male bare also the title of Lo. *Dacres*, and by that name was attainted 1. *E.* 4 *Answ.*

Wherefore the Reason why the heire male could not be regarded was the attainder, and when this was reversed *E.* 4. to satisfie both competitors thus orderd it. And thus much concerning the second point whether a Barony by writ may descend unto the heire female. *Ratio.*

Concerning the third point admitting such descent to their female, when no male can claime it, for then doth this question take place whether her husband should enjoy that dignity in her right or no, something hath beene said hereof in the last question, The third Article.

But for satisfaction wee are to insist upon a resolution in the very point *tempore H.* 8. When Master *Wimbish* tooke upon him the stile of Lord *Talbois, jure uxoris* having no issue by her,

Resolution tcmp. H.8.

The King assisted both by civill and temporall Lawyers gave sentence, that no husband of a Baroneſſe should use her stile untill he had by her a child, whereby he should be intitled by the curtesie to her inheritance.

Ratio. 1.

The speciall reasons that occasioned this sentence were 2. first, the inconvenience that the husband should be a Peere of the Realme to day, and to morrow by the death of his wife none, and so honour subject to mutation without default of the partie.

Ratio. 2.

Secondly, if he had issue, if he should not beare the stile, then should his Son after the death of his Mother, dying in the life of his Father, bee a Baron without land, for if the Father hath by the curtesie: but these questions take place where there is no Heire male at all.

And thus much concerning the nature, qualitie, and estate of the Baron by

by Writ, and for reſolution of the ſeverall points and articles of the queſtion propoſed may ſuffice, onely note the Caſe in 13.*E.*3. where *William de Clinton* having married the Counteſſe of *Huntington*, they joyned in an Aſſiſe of *Nuſance* for levying a Market, *&c.* Exception was taken, becauſe he did not name himſelfe, but it was over-ruled, becauſe having it *ſure Vxoris*, by the Law he may not uſe the ſame title, having no other title thereunto. 13.E.3. *Briefe* 259.

Now come we to Barons by Patent.

A Baron by Creation, is he or ſhee to whom the King hath conferred Baronies by his Letters Patents. Barons by Patent.

The uſuall words are, *Conſiderantes itaq; generis claritat. vel grata obſequia quæ A.B. Mil. vobis præſtiterit*, &c. *Sciatis nos*, &c. *præfat. A.B. adſtatum, gradum, dignitat. & honor. Baronis te erexim̃us præfecerim̃us & creavim̃us eidemq; A.B. nomen*, &c. *Baronis de T. impoſuim̃us*, &c. *Ac per patentes damus*, &c. *habend. præfat. A.B. & Har.* &c.

This kind of Dignitie ſhall bee of ſuch continuance, as ſhall be limited in the *Habend.* ſometimes for life, ſometimes *pur auter vie*, as ſome hold opinion in 32.*H.*6. It may bee in the ſpeciall or in the generall. And this kind of Patent was uſuall before the Statute of 2. as it appeareth by the Patent, whereby *Hugh de Burga* was made Earle of *Kent*, in the time of *H.* 3. which was *Habend. ſibi & hæred. ſuis de corpore Margaret uxoris ſuæ ſororis Alexandri Regis Scociæ procreat. & pro defectu talis exitus reman. Ricis hæred. dicti Hugonis* &c.

32.*H.*6. 2, 6

Pat. 13 *H.* 3. *in turre, p.* 2.

The forme of Creation of a Baron.

The manner of the Solemnitie uſed in the Creation of Barons by Patent, is much after this forme; The Baron newly to be Created, is preſented unto the Queenes Majeſtie ſitting in her Chaire of ſtate; After this order he is apparelled; In his Surcote with the hood, a Baron bearing the mantle before him, and two Barons in their Parliament robes, on each hand one leading him. The principall King at Armes bearing the Patent, and the Officers at armes proceeding on before

fore him; when they come in preſence of her Majeſtie, they make their ſolemne obeyſance three times; And the Baron to be Created kneeleth downe before the Chaire of Eſtate, the ſaid King at Armes delivereth the Patent of Creation to the Lord Chamberlaine, who humbly preſents the ſame to her Majeſtie, who delivereth the ſame to the principall Secretary to bee read, who reading the ſame with a loud voyce at the word *Creavimus*, the Baron which carrieth the Mantle, preſenteth the ſame to her Majeſtie, who puts it on the new Baron, whereby he is Created, and then is the Patent read out to the end, and delivered to the Queene, who delivereth it to the Baron ſo Created, who after moſt humble thankes given to her Majeſty, hee riſeth up, and they depart in like ſolemne order, as they came with the Trumpets ſounding before them. The particular & more full knowledge of theſe Solemnities I doe referre to the Colledge and Corporation of Heraulds, to whom the knowledge of theſe things doth moſt

most specially appertaine.

For the better explanation of this kind of Dignitie, the resolution also of certaine questions shall bee very requisite.

Quest. 1 First, if a Nobleman and his Progenitors have for a long time beene called to the Parliament, and be a Baron either by tenure or by Writ, And have had in regard thereof a place certaine in Parliament, if afterwards the same Noble man shall be created a Baron of that Barony, and by the same name by Letters Patents, whether shall he and his heires retaine his old place in Parliament, which he had according to the former dignitie, or whether shall he lose his old place and take a new place, according to the time of his creation onely.

De la ware, 11. *Rep.* Looke fol 1. *E.* 3 6. The case of the Lord *De la Ware* received a resolution somewhat answerable to this Question, The Lord *De la Ware* 3. *E.* 6. being in sore displeasure, which *William West* his Nephew and heire, who was father to *Tho.* now Lord *De la Ware* procured an act of Parliament, by the which the

the ſaid *William Weſt* was during his naturall life onely, cleerely diſabled to claime, demand, or have any manner of right, Title, or intereſt by deſcent, remainder, or otherwiſe in, or to the Mannors, Lands, tenents, or hereditaments, title or dignitie of *Tho.* Lo. *de la Ware* his vncle, And after the ſaid *Tho.* Lo. *De la Ware* died, and the ſaid *William Weſt* in the time of Qu. *Mary* was attainted of treaſon by verdict, and afterwards pardoned by Q. *Mary*, and after by Parliament in the time of the Q. Maieſtie that now is. And after in 8. *Eliz.* was created Lo. *De la Ware* by Patent, and had place in the Parliament according to his creation, For that by the ſaid act of Parliament in the time of *E.* 6. hee was excluded to challenge the former auntient Barony, and after died, whether the now Lo. *De la Ware* ſhould take his place according to the Baron by Writ, or according to his creation was the queſtion. The opinions of the Qu. Councell being her Maieſties Attorny generall, and Solliciter were that the acceptance of the new creation by the

2. & 3 Ph. & Mary. 1. Eliz.

the said *William West*, could not extinguish the antient dignity, for he had not that antient Dignitie in him at the time of his Creation, but that Dignitie was at the time of his Creation by the Act of *E. 6.* in abbeyance, suspence or consideration of law, and he thereby utterly dis-inabled to have the same during his life onely, so as his acceptance could not extinguish that dignitie which he then had not nor could conclude his heire, who was not disabled by the said act of *3. E. 6.* to claime the antient Barony, which opinion of theirs was soone allowed by the resolutions of the Lo. cheife Iustice of *Engl.* and Lord cheife Baron, and so signified to the Lord Keeper. But this to be noted by the reasons made for the said resolution, That if the said Sir *William West* had beene Baron, and intitled, or in possession of the antient dignitie when he accepted the creation, the law perchance might have beene otherwise, but that remaineth as yet unresolved.

Nota.

Queſt. 2 Secondly, it may be questioned whether a Baron called by Patent ought

ought to be named by the name of his dignitie, in every Writ to be ſued by him, or againſt him.

The bookes of law doe make difference herein betweene Duke, Marqueſſe, Earle, Viſcount, *&c.* which are allowed names of Dignitie and the Baron, for they affirme that ſuch Baron needeth not to be named Lord or Baron by his Writ, but the Duke, Marqueſſe, Earle or Viſcount, ought to be named by their Names or Dignities; Nevertheleſſe I doe take theſe bookes to be underſtood of the Barony by tenure, or Barons by Writ onely, for the title of a Baron by Patent in his Letters Patents under Seale adorned, and named by the name of *Status, gradus & dignitas*, and therefore is requiſite to be named, and ſuch dignities are a parcell of the name of the poſſeſſor, as well as the Title and Stile of Duke, Marqueſſe, Earle, Viſcount, *&c.* 8 *H.* 6. 10. 30 *H.* 8. 30

And although there may be conceiyed this difference laſt mentioned betweene the Baron by tenure or Writ, and the Baron by Patent, yet they being

ing all members of the higher house of the Parliament, they are thereby equally made Noble, Honourable, and Peeres of the Realme, as they are Barons onely, without any other distinction that I have observed. And thus much concerning the three degrees of Barons within this Realme may suffice to be said in generall upon this occasion, for the better understanding and resolution of the controversie in hand.

The priviledge of Barons.

There resteth last of all in this Treatise of Baronage that I would expresse some certaine of the sundry priviledges that the Lawes doe allow unto Barons, and the Nobilitie of the Realm ingenerall, in regard of that favour, which all good policy in every wel-governed Common-wealth doth bestow and yeeld to the Noble and Honourable, wherein I shall content my selfe onely with certaine of those priviledges which I find mentioned in the Lawes of this Realme, purposely omitting such as either the Civill, Common, or the lawes of forraigne Countries doe afford, referring them

to

to a fit place in an intended Treatiſe of Nobilitie.

Priviledge.

Firſt therefore it is a priviledge that the Peeres and Nobilitie of the Parliament doe enjoy, namely to bee tried in the caſes of Treaſon, Felony, and ſuch like by their Peeres.

Mag. Char. 29 10.*E.* 4. 6. 20.*H.* 6. *cap.* 9

The antiquitie and originall of this kind of triall hath (as ſome men doe thinke) his ground from the Statute of *Magna Charta*, *cap.* 29. beginning that *Nullus liber homo*, in theſe words, *Nec ſuper eum ibimus, nec ſuper eum mittimus niſi per legale judicium Parium ſuorum.* But I take it to be more antient, as brought into this Realme with the Conquerour, being anſwerable to the Norman and French lawes, and agreeable with the cuſtomes ſeverall, where almoſt all controverſies ariſing betweene the Soveraigne and his Peeres are tried, *per judicium Parium ſuorum.*

Triall by Peeres Where allowable *De conſuet. feudorum.*

This Triall in antient times was very oft had in Parliament as may bee collected by the Statute of 15.*E.* 3. *cap.* 6. But nevertheleſſe the ſame may as well be performed by Commiſſion under

15.*E.* 3. *cap.* 6.

1.*H.* 4. 1. 13 *H.* 8. 11

under the Lord Steward of *Eng.* the forme, manner, and Solemnitie wherof is expreſſed in the bookes of Law.

This priviledge hath ſome reſtraint, as well in regard of the perſon, as in the manner of proceedings. As touching the perſon.

The reſtraint of the priviledge.

1. Firſt, the Archbiſhops of this Realme, although they bee Lords of the Parliament, if they bee impeached of ſuch affent as aforeſaid, ſhall not be tried by the Peeres of this Realme, but by a Jury of other ſubſtantiall perſons upon their oathes, the reaſon thereof (as I can conceive) as before remembred, namely for as much as the Archbiſhops and Biſhops cannot paſſe in the like caſes upon the tryall of any other of the Peeres, for that they are prohibited by the Eccleſiaſticall lawes to bee judges of life and blood, reaſon would that the other Peeres ſhould not trie them: for this triall ſhould be mutuall foraſmuch as it is performed upon their Honour without any oath taken.

27. H. 8. *Br. Inqueſt.* 100 *Triall* 142. *Fine* 2. *Stamf.* 153

2. Secondly, as touching the perſon, none but Lords of the Laytie being Lords

38. H. 6. *Br.* Treaſon.

Lords of the Parliament, ſhall have this kind of Triall. And therefore hereout are excluded the eldeſt Sonne and heire apparent of a Duke, in the life of his Father, though he be called Earle & beare that title; Likewiſe, the eldeſt Sonne and Heire apparent of an Earle, though he be onely a Lord, or Baron, or beare ſuch Title. 38. H 8. *Caſe Lea. Gray en le Con.*

Thoſe that are Barons, and of the Nobility of *Ireland*, if upon the like offence committed in *Engl.* if they chance to be apprehended in *Engl.* they ſhall not be tried herein by their Peeres, For the Lords of the Parliament of *England* are not their Peeres, but the Lords of the Parliament in *Ireland*. 3. 19 & 20. *Eliz* 36. 6.

And thus much concerning the Reſtraints of the ſaid priviledges in reſpect of the perſon.

As touching the manner of Proceeding the Nobilitie of this Realme doe injoy the priviledge of triall by their Peeres in courſe of Inditement onely, which is a kind of proceeding *ex officio* between the Qu. highneſſe and them, But in any caſe of Appeale of felony, 33. H 8. *Br. Iurors*, 48 *Triall.* 142. 10 E. 3. 6. *Stam* 152.

which is in the suite of the subject, they shall not have the same, but shall be tried by a Jury of 12. men upon their oathes. And thus much concerning this priviledge at this place, and upon this occasion may suffice.

Privilegiũ secundum.
48.E.3.30
48.*Assis.* 6.
35 H.6. 46
22.H.8.22
Reg. 179.
15 *Eliz.* 315.

Likewise this priviledge the Nobility of this Realme doe enjoy, That they are not so to be inpannelled in any Jury or inquest, to make triall or inquiry upon their corporall oathes between partie and partie, And if they be impannelled contrary thereunto, they may have a writ out of the Chancery repeating this priviledge directed to the Iustices, before whom such noble personages are impannelled, commanding them to dismisse him or them, that were so impannelled out of the said Pannell.

Restraint. 1.

This priviledge hath restraint in two cases, first if he inquire concerning the King and Cõmon-wealth in any necessary and important Decrees, as businesse of this Realme, then this priviledge is not allowed, nor taketh place. And therefore divers Barons of the Marches of Wales, were impannelled

pānelled before the Bishop of *Ely*, and other Commissioners of *Oyer* and *Terminer*, to inquire of notable outrage committed by *Gilbert de Clare*, Earle of *Glouceſter*, againſt *Humfrey de Bohun*, Earle of *Hereford* and *Eſſex*, and his ſuits in *Wales* in the 20. yeere of *E.* 1. where *John de Haſtings*, *Edmond de Mortimer*, *Theobald de Verdune*, and other of the Barons of the Marches of *Wales* challenged their priviledges aforeſaid, and much inſiſted upon the ſame, but it was afterwards anſwered by the Court, as by the words of the appeareth, *Eo quod res iſta dominum Regem & coronam & dignitatem ſuos tangit deinde fuit ex parte domini Regis Iohāni Haſtings. & omnibus aliis magnat. ſupranominat. quod pro ſtatu & jure regni, & pro conſervatione dignitatis Coronæ, & pacis ſuæ opponant manum, ad librum, ad faciend. &c. quod eis ex parte Domini Regis injungentur, &c.* The Barons aforeſaid nevertheleſſe did perſiſt in their Challenge, and in the end both the ſaid Earle, betweene whom the ſaid outrage had beene perpetrated

20 E. 1. *Rot.* 14. *Camera. Scar.*

petrated, ſubmitted themſelves to the Kings grace, and made their Fines.

Reſtraint 2 Secondly, this priviledge hath no place in caſe of neceſſitie, where the truth can no otherwiſe come to light, *Regiſt.* 179. for the Writ is, *Quia Barones in Aſſiſſis jurat. &c. poni non conſuêrunt. ut dicunt niſi eorum Sacrament. adeo ſit neceſſarium quod ſine illis veritas in qua non poſſit, tibi præcepimus, &c.*

Privileg. 3. *Bract. l.* 5. *cap.* 9. *fol.* 352. 8. 3. 1. *H.* 4. 1. 13 *H.* 8. 1 3 *H.* 6. 48. *Cooke* 6. 53 In many Caſes the Proteſtation of honour ſhall ſatisfie in Noblemen, as in triall of their Peeres, they proceed upon their honour, not upon their oath. And if a Nobleman on an action of debt upon an Accompt, in caſe where the Plaintife is to be examined upon oath, upon the Statute of 5. *H.* 4. *cap.* 8. it ſhall ſuffice to examine his Attorney, and not himſelfe upon his oath.

Yet if a Nobleman will give evidence to a Jury, reaſon would that he ſhould bee ſworne, for they are not bound to beleeve him upon ſuch proteſtation otherwiſe then they thinke in their conſcience to be conformable unto truth.

If

If a man doth receive a menace at the hand of a Nobleman, whereupon he conceiveth feare of his ſafegard, and prayes a *Supplicavit* in the Chan. directed unto the Juſtice of peace, or Sheriffe to take bond, *&c.* ſuch Writ which otherwiſe is ordinary, but the Lord Chancellour ſhall award a *Sub-pæna* in ſtead thereof, and when he appeareth in ſtead of ſurety, he ſhall onely promiſe upon his Honour to keepe the peace, which the Law hath allowed in this point a Caution ſufficient.

Privileg. 4. 35 *H* 6. *Sub-pæna* 20 *V.* 14. *E.* 3.

A Nobleman is not to bee arreſted by any *Capias*, and therefore cannot be outlawed in any civill Action, but onely in Criminall,

Privileg. 5. 21. *E.* 3. 39. 43 *E.* 3. 33. 8 *R* 2 7. *H.* 4 2. 11. *H.* 4. 15 1. *H* 5. 14. 14. *H* 6. 2. 22 *H.* 6. 226.

And by the ſame reaſon lyeth no Attachment againſt him, as it was ruled in Parliament, 14. *Eliz.* in the Lord *Cromwells* Caſe.

But if he make any notable contempt againſt the proceedings of the Law, then ceaſeth this priviledge, for *Fruſtra legis auxilium invocat, qui in legem peccat.* As if in a Writ *de homine replegiando*, hee will not permit the

26. *H* 8. 7. 14. *Eliz* 115. *Reſtaint.*

Sheriffe to execute the Writ or Essoigne the party, or upon a Rescousse a *Capias* hath this priviledge notwithstanding.

27.H.8.14
15.H.7.1.

So in cases Criminall, a *Capias* and an *Exigent* may be awarded.

Chanc. nomine Subpæn.

The like priviledges doth the Court of equitie allow in cases of conscience, for the Lord Chancellour doth not award any Sub-pæna, but sendeth his Letters missive in lieu of other ordinary Processe.

Privil.6.
14 E.3.25.
15 E.3.21
22 E.3.9.
27.E.38.
41.E 3.31
27 H.8.22

In the prosecution of any Action personall, the Plaintife may pray *Jour de grace*, but against a Peere of the Realme, it shall not be allowed, although it be allowable against other persons.

Privileg.7.
13.E 3.
Chal.115.
22.H 8.22
Dyer. 107.
3.& 4. *Eliz.*24
9.& 10.
*Eliz.*26.

If any Lord Spirituall or Temporall be partie to any Action, there ought to be one Knight at the least, to be impannelled in his Jury, with other the most sufficientest Esquires in the Countrey, otherwise he may challenge the Array, but if there bee no Knight in the County, the Pannell shal be made of the most sufficient *Vavasours* and Esquires there inhabiting.

But

But if one bring an Action againſt another, and the Sheriffe impannell a Jury, where there is not any Knight, and before the Triall the Plaintife or Defendant is Created a Baron, or, *&c.* and hee doe challenge the ſaid Jury, ſuch challenge ſhall not bee allowed, for at the time of the enqueſt made, he was not ſo reputed, as in the Caſe of *Reginald*, late Earle of *Kent* may appeare. 14. & 15. *Eliz.* 318.

If the King grant an Annuitie or Rent, to a then created Baron, for the ſupport of his Degree, which they call creation money, this is ſo annexed to the Dignitie, that by no manner of alienation it can be ſevered. *Privileg* 8. 6.H.6.2.

If the King upon ſuch Creation give land, *&c.* untill he ſhall bee advanced to ſome other living, and upon Eviction to have the valew, if he be impleaded of this land by *Scire facias*, *&c.* hee ſhall have aid of the King. 21.E.3.47

If a Baron be partie to a ſuite, and would be eſſoigned, hee that caſts the eſſoigne out, to put in ſureties to prove the cauſe which is not uſuall in *Privileg* 9. *Pract.l.*5. *fol* 337. & 351.

case of common persons.

Privil. 10. In all cases where he is to be amerced his amerciament is not lesse then a hundred shillings by the Statute of *Magna Charta* 14. and it was to be affirmed by his Peeres. But for that it were troublesome to assemble Barons for so small matter, such amerciaments in time past have beene obtained by the Barons of the Exchequer, who were sometimes Barons of the Realme.

16 E.3 am.
14 38 E.3.
31 1.H.6.
7.9 H.6 2
32.H.6 30
19.E.3. 9.
21.E 4 77
Fleta lib.2.

Privil. 11. Whereas by the Statute 32. *H.*8. no subject might keepe in his family above foure Strangers borne, yet by a *Proviso* every Baron may keepe sixe.

Br.fol.116
Cooke 8 39.
Stat 32 H. 8.16.

Privil. 12 If a Lord of the Parliament having place and voyce there, be convicted of Felony, wherein Clergie is allowed, upon request, alleadging that hee is a Baron, *&c.* and clayming the benefit of his Clergie, although hee cannot reade without burning in the hand, losse of Inheritance or corruption of blood, hee shall for the first time bee deemed a Clerke convict, and may have purgation.

Stat 1.E 6. cap.13.

Privil. 13. Also, whereas it is ordained that the

the Juſtice of the Peace named of the *Quorum*, ſhall be reſident in his Shire, by a *Proviſo*, the Peeres of the Realme are exempted. *Stat. 2. H 5 cap. 4.*

By the antient Lawes before *William* the *Conquerors* time, every man above 12. yeeres ſhould be ſworne to the King, which we obſerve now in the veiw of *Francke-pledge*, *Court-leete*. But noble men, *&c.* are neither bound to attend the Leete nor take the oath. *Lamb. perambul. de Kent. 21. Britt. cap. 29. Marlb. cap 10.*

If an Error be brought in Parliament upon a Iudgement in *B. R.* the upper houſe alone without the Commons, are to examine the errors. *Poſtnat. 20.*

In 11. *H. 6.* 2. in a caſe concerning diſtreſſe taken for expences and fees of the Knights of the Parliament. It was agreed that the Barons are not contributorie for Lands, parcell of the antient Barony, but for other lands: but there is a queſtion made whether the purchaſer of ſuch an antient Barony ſhould enjoy the ſaid priviledge, which queſtion was not worthy the queſtioning. for as lands holden by Villaines ſervice doth not make the free *11. H 6. 2.*

free purchaser a Villaine, though he be bound to doe such Villaine service: so doth not such Purchase ennoble him that purchaseth.

Stat. 5 Eliz. cap. 1.

By the Stat. of 5. *Eliz. cap* 1. all Burgesses of Parliament shall take the oath of supremacie, so shall Citizens and Barons of Cinqueports, But there is a *Proviso* in that Stat. that forasmuch as the Qu. is otherwise sufficiently assured of the faith, *&c.* of the temporall lawes; Therfore this act shall not compell any of, or above the degree of a Baron to take this oath, nor to incurre any penalty limited for the refusall.

Stat. 5. R. 2. cap. 12.

By the Stat. of 5. *R. 2. cap.* 12. the King defendeth the passage of all manner of People in every Port, *&c.* upon the Sea Coast upon paine of forfeiture of all their goods, except Lo. and other great men, and true and notable Merchants, and the Kings souldiers and all others shall forfeit, *&c.* But because the Statute is abrogated by 4. *Iacobi*, *c.* 2. I do not set this down for one of the priviledges at this day; But *Philip* Earle of *Arundell*, Son of

Thomas

Thomas Duke of *Norfolke*, was taken upon the Sea passing into *France* about 30. *Eliz.* and was fined in the Starre chamber, because he tooke not shipping at one of the Ports mentioned in that Statute. *Cromptons Iurisd. 31.*

In the Priviledge before mentioned of his Clergie, it shall be allowed him for breaking a house by day or night, for robbing upon the high-way, and in all other cases excepted in the Stat. of 1. *E.* 6. 12. saving in wilfull murder and poysoning, But in all other cases, wherein Clergie is taken away, he is in the same degree with a common person, but the Court will not give him the benefit of this Statute, if he requireth not the same. If a Lord doth confesse his offence upon arraignment or abjure, or is outlawed for felony, in these cases it seemeth he may have the benefit of this Statute, *viz.* his Clergie, for that by the Statute of 18. *Eliz. cap.* 18. hee nor any other need to make purgation, but shall bee forthwith delivered out of prison by the Justice. *Sed quære Bolton* 202. by the Imperiall constitution *Stat. 18. Eliz. cap. 18.*

tution, *Nobiles non torquentur in casibus, in quibus plebei torquentur nec suspenduntur, sed decapitantur.* Which forme by favour of the Prince is allowed in *England*; Yet *Thomas Fines*, Lord *Dacres*, of the South. in the 37. *H.*8. and the Lord *Sturton* 4. *Mar.* were hanged.

Iurisd. Br. 48.

By the Statute of 1. *Eliz. cap.* 1. for uniformitie of Common prayer, there is a *proviso*, that the Baron shall bee tried *per Pares*, and not by any Ecclesiasticall Courts, read the Statute at large.

1. *Eliz.* *cap.* 1.

At the Common law it was lawfull, for any to retaine as many Chaplains as he would, but by the Statute of 21. *H.*8 13. a restraint was made, *viz.* to every Archbishop, and Duke, sixe Chaplains, with dispensation to keepe two Benefices with Cure, to every Marquesse or Earle five, with the like priviledge; To the Lord Chancellour, every Baron and Knight of the Garter three, with the same priviledge. If a Bishop bee made an Archbishop, or a Baron an Earle, yet can they have but Chaplains as Archbishop

biſhop or Earle, becauſe though there be divers Dignities, yet the ſervice is to be done, but to one perſon; ſo if he be removed from his Office, in this caſe he cannot be Non-reſident without he procure a *non obſtante*.

So if a Baron retaine a Chaplaine, and before he is advanced, his Lord is attainted, as the Earle of *Weſtmerland* was, hee cannot accept a ſecond Benefice. *Cooke rep. 4. 117. Actons Caſe.*

Thoſe that are firſt retained, ſhall onely have priviledge in caſe, *&c.*

By the Statute of 2. *H.* 5. 8. that gives authoritie to the Sheriffe to raiſe *Poſſe Comitat.* Nevertheleſſe, may he not command the perſon of a Nobleman to attend that ſervice, but if the Sheriff upon a *ſuppliavit* againſt him, returne that he is ſo puiſſant that he dare not arreſt him, the Sheriffe ſhall be grievouſly amerced for ſuch returne, for the Writ is to all Archbiſhops, Biſhops, Dukes, Earles, *&c.* and to all liege men of the County to to be ayding to him, therefore by intendment none will reſiſt the execution.

The

The words of *Charta de foreſt. cap.* 11. are every Archbiſhop, Biſhop, Earle, or Baron, comming to us at our commandment and paſſing by our forreſts may take one beaſt or two by the view of the foreſter if he be preſent, or elſe he ſhall cauſe one to blow an horne that he ſeeme not to ſteale our Deare. In this Stat. though a Duke, Marqueſſe, or Viſcount, being Lord of the Parliament being commanded, *&c.* ſhall have the ſame priviledge, ſo if the King ſend for him letters miſſive, Meſſenger or Sergeant at arms, or by writ of *Sub-pœna*, to appear in Chanc. they ſhall have the benefit of this Statute becauſe they came at the Kings commandement ſo in caſe of *Scire facias* out of the Chancery or *D. R.*

But if ſuch Proceſſe goe out of the *C. B.* to appeare before the Iuſtices or the Barons of the Exchequer he ſhall not have the benefit of the Statute, becauſe the Statute is *Veniens ad nos*, and in thoſe Courts they are, *Quod coram nobis, &c.* So of the Starre-chamber. Alſo Lords that come to viſit the new King

King, though not ſent for, ſhall have the priviledge: and ſo note this Statute is a Warrant dormant and is to be vnderſtood of their returning homeward *Manwood, cap.* 13. *Crompton Iuris, D.* 167. note the Statute doth give licence to kill or hunt in the Kings Parkes, though the Letter bee *Tranſiens per forreſtam noſtram.* Note that in certaine Caſes the Law doth give priviledge to the ſonnes or brethren of Noblemen, though they bee not of that degree, *Stat.* 21. *H.* 8. 13. *&* 7. *E.* 6. *cap.* 5. *Nota.*

Certaine Caſes wherein he hath no Priviledges.

IF the King commit a Baron to priſon *Durante bene placito*, he cannot be diſcharged by Bayle or mainpriſe, or by the common Writ *De homine replegiando.* And by the ſame power it is if a Noble perſon bee committed by the Kings Councell, for they are incorporated to his Highneſſe, and doe command, as with the Kings mouth: and the ſame law is, if a Nobleman be committed

committed to prison by the absolute Commandment of the Kings Judges, sitting in their place of Judicature, *Stamf. lib.2. cap.18. fol.72.* as you have before, when the Prince himselfe by the chiefe Justice sitting in the Kings Bench, and was not bayleable. Also a Capias and an Exigent may be awarded upon an Indictment of a felony.

Stam.lib 2. cap 18. fol.72.

This Statute of Præmunire, *cap.1. 16.R,2. cap.1.* upon which Statute an Abbot which was Lord of the Parliament, being impleaded, did pray priviledge to appeare by Attorney, *Et per Curiam*, could not for a *Cessavit* lyeth against him.

Upon contempt of Peeres a *Capias* may bee awarded, *1.H.5. ult.* 27.*H.* 8.22.

If hé depart the Realme as Embassadour, *&c.* and returne not at the Kings commandement, the King may seize his lands and goods, *Dyer* 108. 176. The Dutches of *Suffolkes* case, if he imprison any man in his house, whereupon there is a writ *De homine replegiando*, if he convey him from the

Sheriffe

Sheriffe the Court will award a *Withernam* to arreſt, and impriſon him till he deliver the priſoner. 11.H.4.15

All Lords are compellable to take the oath mentioned in the Statute 3. *Iacobi*, and ſee the Statute of 7. *Iacobi*, who have authoritie to adminiſter it unto them. 3.Iac.ca.4. 7 Ia.cap.6.

Being arraigned of felony in an Appeale, he ſhall not be tried by his Peeres, as in caſe of Inditement, in which caſe he may not challenge any of the Triers, either peremptorily or upon cauſes which is permitted to all other common perſons.

The Iudgment is the vſuall Iudgement given againſt common perſons, and though the King pardon all but the loſſe of his head, that is of ſpeciall grace not *ex debito*.

By Attainder the blood is corrupted and he and his poſterity made ignoble, and cannot be reſtored by the Kings pardon, but onely by authoritie of Parliament. Stam.Lb.3. cap.34.

And note that Nobility is not a thing ſubſtantiall, but meerely accidentall preſent or abſent without corrup-

tion of his ſubject, for experience ſhewes that honourable titles are reſtrained by exorbitant crimes, when the nature in the meane while cannot be thruſt out with a forke, wherefore though we tearme extinguiſhment of Nobility in caſes of Attainder, yet this phraſe is not vſed as though Nobility were eſſentially in the humour of the blood more then any other hereditary faculty; But becauſe the right of inheritance which deſcends by communication of blood, is by that meanes determined, and alſo in regard of the deteſtation of the crime, it is called corruption of blood, 16. *Eliz. Dyer* 332. The Lord *Charles Howards* caſe, if one be made a Knight by a forraign King, he is ſo to be ſtiled in all legall proceedings in this Realme, But if he be created by the Emperour an Earle, it is other wiſe, *Coke* 7.16.

If the King Create the ſon a Duke, *&c.* and the father dies, he within age ſhal be in ward, but if he had bin made a Knight in his fathers life, he ſhould not be in ward, neither for the lands deſcended, nor marriage, *Coke* 74.

Druries

Druries Caſe, though he be within age.

Nobilitie and Lords in reputation onely.

THere be other Lords in reputation and appellation, who nevertheleſſe are not *Iure*, neither can they enjoy the priviledges of thoſe of the Nobilitie of the Parliament (*viz.*)

The Sonne and heire of a Duke, during the life of his father, is onely by curteſie called an Earle, and the eldeſt ſonne of an Ea. a Baron, but not in legall proceedings *Br.* Treaſon 2. But the King may create them in the life of their Auncеſtors Lords of the Parliament. *Coke* 8-16.

A Duke or other of the Nobilitie of a forraign Nation being named Duke in Letters of ſafe conduct, that makes him not Duke to be ſued by that name in *England*, but a forraigne King ought ſo to be ſtiled, though he hath not *merum imperium* out of his owne Kingdome *Cok* 7. 15. *&c*,

All the younger Sonnes of the King

of *England* are Earles by birth without other creation, and onely Lords by reputation,

A Lord of *Ireland* or *Scotland*, though he be *poſt-natus*, is but onely Lord in reputation.

Noble Women.

Although Noble Women may not ſit in Parliament in reſpect of their Sexes, yet are they in Law Peeres of the Realme, and may challenge all, or moſt of the former Priviledges.

Coke 8.53.

But the opinions of ſome have been, that they cannot maintaine any Action upon the Statute of 2.*R*.2. *cap*.2. *de Scand. Magnat*. becauſe the Statute ſpeakes onely of other Sexes.

Crompt. Iuſt de peace 85.

If any of the Kings ſervants within the Checkroll conſpire the death of any Noble woman, that is not felony within the Statute of 3.H.7.13.

Honourable women of three ſorts.

By Creation, Deſcent, Marriage.

H.8.

H. 8. Created *Anne Bullen* Marchioneſſe of *Pembrooke*, & King *James* Created the Lady *Compton*, Wife to Sir *Thomas Compton*, Counteſſe of *Buckingham*, in the life of her ſaid Husband without any addition of honour to him. And formerly by Patents openly read in Parliament without any other inveſture did Create *Mary* ſole Daughter and heire of the late Baron of *Aburgauen*. *Baroneſſe de le Spenſer*. 1. *Camden* 63.6.

Noble Women by Deſcent are thoſe to whom lands holden by ſuch Dignitie doe deſcend, or whoſe Anceſtors were ſeized of an eſtate deſcendable in their Titles of Dukedomes, *&c.* or thoſe whoſe Anceſtors were ſummoned to the Parliament, by this an Inheritance doth accrue to their poſteritie. 2.

They who take to Husband any Peere of the Realme, though they themſelves were not noble; *Forteſcue, fol.* 100. 3.

Queſtion hath bin made whether the Dignitie of one ſũmoned to the Parliament dying without iſſue male may

descend to the female, but this may appeare by the former Treatise.

Concerning the title of Honour descendable to the Heire female, it is cleere that such offices being of estate of inheritance doe descend, as the office of the high Constableship of *England*, challenged *tempore H.* 3. by the Duke of *Buckingham* was adjudged to descend to the Daughter of *Humfrey Bohun* Earle of *Hereford*. So the office of Earle Marshall descended to the house of *Norfolke*, all which offices are as unfit to be exercised by their sexes, as unfit for them to be summoned to the Parliament.

And if such Title come in competition, the issue shall bee tried by record, and certified by the Kings Writ, and not by Jury, *Coke* 6. 53. 7. *part* 15.

Though all Daughters be Coperceners, and make but one Heire, yet in descent of Dignities it is otherwise, for they bee things entire, participating of superioritie, therefore descendable onely to the eldest. And so is the Civill Law, yet there was a Judge-

ment

ment *tempore H.*3. touching the deſcent of the Earledome of *Cheſter*, the Earle dying without iſſue, leaving his Siſters his Heires; The Judgement was that it ſhould be divided equally among Coperceners; But this Judgement was held erroneous in that very age, *Vide Bract. li.*2. *cap.*34, *fol.* 76. *hoc fuit injuſtum, &c.* His reaſons are, becauſe the honour of Chivalrie, chiefly conſiſting in the Nobilitie may not be divided: for by multitude of partitions, the reputation of Honours in ſuch ſucceſſion muſt bee impaired, and the ſtrength of the Realme being drawne into many hands by ſuch partition much infeebled. In which reſolution *Britton* by commandment, and in the name of *E.*1. accorded *fol.* 187. The former Judgement was given about 17.*H.*3. And the Writers of that time teſtifie, that it came holy unto *Iohn Scot*, Son of *David* Earle of *Huntington*, and *Anguiſh* and *Maude* the eldeſt Siſter of the ſaid *Randolph*, if it were given upon the death of *John Scot*, who died without iſſue about 24. H.3. yet it ſtood in force, *Obijt.*17. *H.*3.

because the King assumed the Earledome to himselfe upon other satisfaction to the coperceners, *Mat. Par.* 366. *tamen vide Mills* 75. & *Guillem* 28.

Hugh Lupus the first Earle of *Chester*, was by the Conquerour his vncle created into that dignitie, *habend. sibi, &c. adeo libere per gladium sicut Rex ipse tenuit Angliam per Coronam, &c.* he died without issue, and the Earldome divided among his 4. sisters. If she be noble by birth, though she marry vnder her degree, she remaines noble, but those innobled by marriage, and after marry with a man of meaner degree, utterly lose her former dignitie, *Fortescue* 100. *Cooke* 6. 33. 4. 118.

Mills 74. 75. *Coke* 35. 7 *part* 15.

It was the case of *Ra. Howard* Esquire, husband of the widow of the Lord *Powes* against the Dutches of *Suffolke*, the Writ naming her Ladie *Anne Powes*, *Dyer* 79. so also in Qu. *Maryes* time when the Dutches of *Suffolke* married *Stokes bre. Bro.* 146. digest *lib.* 1. *Tit.* 9. for the dignity accruing by marriage is but in fait

fait and not by any record, *Coke* 6. 53. *Coke* 4. 117. *Cawells instit. lib.* 1. *Tit.* 10. 15.

So long shall a Dukes wife be called Dutches, and an Earles Counteſſe, and enjoy all honours appertaining to that eſtate, with taſting, kneeling, ſerving, *&c.* And a Baroneſſe and Knights wife ſaluted Lady, *Quamdiu matrimonium aut viduitas vxoris durant*, except ſhe elope, for as then every woman ſhall loſe her dower, ſo being advanced by titles of dignitie by that husband by ſuch elopement loſeth them.

If a Ladie which is married come through the forreſt, ſhee hath no priviledge by the Statute, but a Dutcheſſe or Counteſſe during the time ſhe is vnmarried may, *Crompt. Juriſ dict.* 167.

Such Ladies whether they be married or ſole upon Indictment, ſhall be tried *per Peeres* by the Statute of 20. *H.* 6. *cap.* 9. it being a declaration of the common law. *Coke* 6. 52.

By the Civill Law, *Si filia Regis nubat alicui Domino, vel Comit. dicetur tamen*

tamen ſemper Regalis.

Among Noble women there is diff:-rence of degrees, and according to their qualities, the law gives ſpeciall priviledges as followeth by the Stat. of 25. of *E.*3,2. it is high Treaſon to compaſſe or imagine the death of the Queene, or to violate the Kings com-panion.

The Kings Spouſe is a ſole perſon in law to purchaſe, *&c.* plead and be impleaded, *Coke* 4. 23. 6. *Theboal lib.* 1. *cap.* 4 24 *E.*3 3. 8. *Bract.* 363. And of ſuch acts of Parliament as con-cerne her, the Iudges ought to take notice, *Coment.* 231. 2 *Coke* 8. 28. In ſome caſes ſhe ſhall have Preroga-tive as the King himſelfe. See the caſe of Wardſhip 5 E.3. 4. *Stamf. prerog. cap.* 2.

The Qu. Wife to the King, or widow, ſhall not be amerced if ſhe be non-ſuited, whereas all other ſub-jects ſhall, for ſhe ſhall participate with the Kings prerogative, *Coke* 8. 62. but not in all caſes, for the ſub-ject ſhall not ſue to her by Petition as to the King, 11. *H.*4 67. *Stamf. pre-rog. cap.* 22.

Againſt

Againſt the King, *Nullum tempus occurrit*, otherwiſe of the Queene 18. *E.* 3. 2. *Philippa Regina Angl. Ibid. fol.* 1. & 13. *Stam. prerog.* 18.

In 21. *E.* 3. 6. A Protection was allowed againſt the Queene.

In a Writ of dower againſt *Iſabel* Qu. of *England* mother to the then King, the Iudges were of opinion that ſhee was not to anſwer to any Writ, but ſaid they to the plaintiſe it behoveth you to go to her by Petition, to whom the Demandant *Dixit gratis*, and prayed the court for a continuance of the action vntill ſhee might ſpeake with the Queene; But they nor the Queenes Councell would agree that, the Qu. ſhould be accepted as anſwerable 10. *E* 3. 379.

The Wife of the Kings eldeſt Son hath ſome prerogative not communicable to the Wives of other Noblemen, for by the Statute of 25. *E.* 3. It is high Treaſon to violate her.

Dutcheſſes alſo and Counteſſes have ſpeciall honour appertaining to their eſtates, as kneeling and taſting, which things I leave to the Heraulds.

The

The Statute of 7. *Iac. cap.*6. intituled an Act for the administring the oath of Allegiance requireth those of 18. yeares or above to take the said oath. The title is for administration of the Oath, *&c.* and reformation of married women Recusants.

Ladyes in Reputation.

THe Wife or Widow of the sonne, and heire of a Duke or Earle, in the life of his Father, is a Lady by Curtesie, and taketh place according to the antient time, as they have beene permitted by their Soveraigne Prince, and allowance of the Herauld. But in legall proceedings they are not to have such Privilodge.

If a Noblewoman of *Spaine* come into *England* by a safe conduct, or, *&c.* And so stiled in the said Letters, yet is shee but a Lady in reputation.

An English woman borne, taketh to Husband a Spanish or French Duke, though hee be made Denizen, yet shall she not beare the title of Dignitie in legall proceedings.

A German woman is married to the Marqueſſe of *Northampton*, or, *&c.* unleſſe ſhe be made Denizen, ſhee cannot claime the priviledge or title of her Husband, no more then ſhee can claime Dower or Joynture.

An Engliſh woman doth take the Earle of *Kildare* in *Ireland* to her Husband, or if a Lord in *Scotland*, though hee be *poſt natus*, *&c.* their wives ſhall not participate their Huſbands Dignities.

But if the King Create one of his Subjects naturalized by Parliament to be Viſcount *Rocheſter* within *England*, and after ſummon him to the Parliament by Writ, and aſſigne him place there, by this is he made Peere of the Realme, and partakes with them of all Priviledges, and by conſequence his Wife, Widow and Children after him, 34. *E.* 3. 35. *Gilbert Humfrevils caſe.*

E. of *Angus* in *Scotland.*

But if an Engliſh man be made by the Emperour, Earle of the Empire, his Wife ſhall not beare that title, either according to law or reputation.

All Daughters of Dukes, Marqueſſes

queſſes and Earles, are (by cuſtome long uſed in the Kings Palace) to be named Ladies, and to have precedencie according to the degrees of their parents, and of this cuſtome the Law taketh notice.

But nevertheleſſe in the Kings Courts of Juſtice, they beare not this title of Honour, no more then the Sons of ſuch noble perſonages, Brothers to ſuch Ladyes may doe.

The

The Hypotheſis or particular Queſtion.

WHether the Dignitie of *Aburgavenny, Sit conjuncta feodo*, and ſuch as ought to deſcend to the ſpeciall Heire male ſeized of the Caſtle, bearing the head of that Barony, and of the lands that make that Honour.

Or whether the Dignitie, Name and Stile, to be Baron of *Aburgaven.* ought to deſcend to the generall Heire male, who is not intereſſed in the ſaid Caſtle or honour.

For the more orderly proceeding herein to avoid confuſion, and that every thing appeare concerning his queſtion in his proper perſon. There ſhall be ſhewed,

Firſt, that the Barony is a Barony by by tenure, a very antient Honour, and no

no Barony by Writ onely, whereof will enſue by the former Declaration in the treatiſe of Barony; That the dignitie and name *de jure* ought to go and deſcend with the Caſtle and Honour ſo holden, as long as the ſame ſhall or may continue in the name, blood, and line of ſuch as are nobly deſcended, and may ſupport the ſame. There ſhall be Proved

2. Secondly, That the ſaid Barony of *Aburgav.* and the name, title, and dignitie of Lord, and Barony of *Aburg. de facto* hath come and deſcended with the Caſtle, which make the honour by the ſpace of 300. yeeres laſt paſt, in their noble Families in the blood of the *Haſtings*. 2. In the time of *Beauchampe*, and the time of *Nevill*, where the name by the Grace of God doth now, and long may continue, every which family having right to the ſaid Caſtle and honour, did lawfully beare the name and title of Lord *Aburgav.* and had place in Parliament accordingly. And therein ſhall be anſwered the objections made to the contrary.

That

That the Barony *of* Aburgavenny *is a Barony by Tenure, and an antient Honour.*

AFter the *Normans* had conquered this Land, it was carefully obſerved by them as a matter of much moment, and a point of ſpecial policie to place upon the confines or borders of the Brittaines or Welch, not then ſubdued, men of much matter, not onely ſufficiently able to encounter the inrodes and invaſions of the enemie, but alſo willing to make onſet on them, and to enlarge the conqueſt. Theſe men thus placed were of high blood, credit, and continuance among them, countreymen to the *Normans*, and in whoſe faith, and prowes the Conquerors repoſed ſpeciall confidence and truſt. And therfore in the territories given unto them to hold, the tenures were deviſed to be very ſpeciall and of great importance, and their Honours inriched with many priviledges, The Earle of *Cheſter* for the North border of *Wales* erected a County *Palatine*; And the Barons of

7. *H* 6. 35. 18 *E* 2. *Aſſiſis* 382 *Fol.*

the middle part of the South Marches were adorned in a manner with a Palatine Jurisdiction, having a Court of Chancery, and Writs onely among themselves pleadable, to the intent that their attendance might not thence be driven, for the prosecuting of Controversies or quarrels in the Law. And as for the other part of the South Marches, they seemed sufficiently fenced with the River of Severne and the Sea.

The Castle of *Aburgavenny* taketh his name from the River of *Gevenny*, whereon it is scituate, and the Brittish word *Abber*, which signifieth a Mouth, and is interpreted the Mouth of *Gevenny*, because the Castle and Mouth of *Aburgavenny* is built neere the place where the said River of *Gevenny* doth open it selfe to the end of the Uske; It is an antient Fortresse of old foundation: there or neere unto the place (as learned men doe probably, and upon many good circumstances conjecture) where the Romans builded their *Gabonium*. It is the chiefest Towne of the County, called the

the higher *Guent*, by the Romans called *Ventum Gallinum*, now parcell of the County of *Monmouth*.

This Caſtle, *&c.* was firſt given to be holden *Per Baroniam ſive grand Serjantie*, the ſervice whereof is of great importance, as appeareth by this Record following.

Inquiſitio capt &c. At *Aburgavenny*, 6. *E.* 2. upon the death of *Iohn Haſtings* found *quod idem Iohannes tenuit caſtrum, &c. De Rege in Capite per ſervicium homagij wardi maritag. cum acciderit, & ſi fuerit inter Regem Angl. & Principem Walliæ dictus Iohannes debet cuſtodire patriam de Operwent ſumptibus proprijs.* *Ex bundell. Eſch. 6. E. 2. Mar. Wal.*

Inquiſitio capt. apud Hereford upon a Writ of *ad quod damnum*, found *quod non eſt ad damnum Regis nec, &c. ſi Rex conceaat Priori, &c. de Aburg. quod ipſe duas acr. prat. vocat Weldelham, &c quas de Lorentio de Haſtings nuper Comit. Pembrooke poſt Statutum de Mortmaine retinere poſſit ſibi & Succeſſoribus ſuis, & dicunt quod prad. 2. acr. fuerunt de dominicis prædicti Comit. & tenentur immediate de Rege ut parcella* *Ex Pundell. 1 Eſch. 25. E. 3. Ex rot. Patent. 4. E. 1. num. 36.*

Castri quod tenetur de eo, & de nullo alio.

Also, that this Barony was of a very large Seignorie, and had petty Barons or Baronets holding thereof appeareth by Writ, 1. *E.* 1. for the more speedy gathering of 15th which was granted to him, towards his charge to the Holy land, which Writ is directed to the Tenants of the said Barony, that they should pay their part to *Gremball Poneefote*, and *Henry de Bray* appointed Collectours, directed in this manner.

Rex Abbatibus Prior. Baron. Mil. liberis hominibus & omnibus alijs Tenentibus de honor. Aberg. Salut. Cum Archiepiscopi, Episcopi, Abbat. Prior. Mil. & omnes alij de regno 15th *de bonis suis, quibusdam tamen rebus exceptis nobis liberaliter concesserunt & benigne ad exonerationem debitorum in quibus diversis mercatoribus de tempore quo moram in terra sancta gessimus obligamur, Nos, &c.*

Obser. 2. *Observatio secunda*, that the Title of *Aberga. de facto* hath descended with the Castle, &c.

William

William Conquerour gave the County of higher *Guent*, unto *Hamline de Backlune*, the Sonne of *Drugo de Backlune* a Norman, which builded the Caſtle and Priory of *Abergavenny*, and after aſſured the ſame to *Brian* de *Wallingford*, Sonne of *Eudo* Earle of *Brittaine*, Sonne of *Lucie* younger Siſter of the ſaid *Hamline*, by whom it was conveyed to *Walter* ſecond Sonne of *Miles* of *Glouceſter*, Earle of *Hereford*, from him it came to his Brother *Henry*, and thence to the Families of *Brewes* Barons in the Marches of *Wales*, and from them to *Cantelupe*, Barons in the ſaid Marches.

Hamline de Backlune.

Walt. of Glou.

Brewes.

Cantelupe.

The the line of Haſtings, owners of this Caſtle, and in reſpect thereof intituled, Barons of Aburgavenny.

GEorge *de Cantelupe* Baron of *Aburgavenny* and *Cant.* the laſt of that name died without iſſue having two Siſters, *Ioan* the eldeſt married to *Henry Haſtings* and *Milliſcent*, married to *Eudo la Zouch*. *Henry Haſtings* by his had iſſue *Iohn*, and becauſe

Haſtings.

Ed. Kelen. Article 35. Rot. Cart. H 3.

he did adhere to the Barons *tempore H. 3.* hee was impriſoned for ſeven yeeres, during which time hee died. And that Barony being in the Kings hands, he gave it to *Peter de Sabandia* in exchange for the Mannor of *Baydenhall* parcell of the Honour of *Richmond* which the ſaid King had given him; So that this Barony came now to the Earle of *Richmond*, as by an office found after the death of *John Britton* Earle of *Richmond*, *tempore E. 3.* appeareth.

Eſc 8. E. 3. In Suſſex. Ex rot. clauſ. 2. E. 1 indorſ. memb. 12.

The ſaid *Iohn Haſtings* at the time of the death of *Henry* his Father, and *Joan* his mother, both which died in the life of the ſaid *Geo. Cant.* as alſo at the time of the death of the ſaid *Geo.* his Uncle was within age, and in ward to *E. 1.* during whoſe minoritie, there was a partition betweene the ſaid *Milliſcent* his Aunt, and the ſaid *Iohn*, by which the Caſtle, *&c.* of *Aberg.* then extended to the yeerely value of two hundred pounds, eighteene ſhillings and three pence, as alſo *Kill Garren*, St. *Cleere*, and other lands in *England* and *Wales*. And unto the ſaid

said *Millisent* were allotted the Castle of *Totnes* in *Devon*, *&c.* *Eyton* in the County of *Bedford*, and *Farringworth*, *&c.* with divers other lands.

The said *Iohn* came to full age, 11. *E.* 1. and did his homage, and had his Livery as appeareth by Record, but by the same Record appeareth, that the Barony of *Hastings* was never redeemed according to the Edict *Kellenworth*, but granted to *Peter de Sabandia*, as aforesaid.

The first *John Hastings*, Baron of *Aberg.*

Claus 11. *E.* 1. *Mem.* 6.

This *Iohn* did lawfully beare the Title of Lord *Abergavenny*, by this partition.

The said *Iohn* being one of the Competitors for the Crowne of *Scotland*, with the rest submitted himselfe 19. *E.* 1. to the determination of the said King as Supreame Lord of *Scotland*, which Commission was framed in these words:

A tout crus, &c. Florence Comit. de Holland, Robert de Bruse, seigneur de Vasdaum. Io. Baliol Seigneur de Badenaw, Patrick de Dumbar, Comite de la March, Ia. de Vascye pur son pier Nich. de Seules, Gulielm. de Rosse: Salus

In magno Rot. Scar.

lus en dieu cum nous entendomus daver droit en Roylme de Escoce, & cel duel jure chalenger & avouer devant ceo q̄ pluis de poner, jurisdiction & reason eist de trier nostre droit. Et le noble Prince Seig. Edward, &c. nous syant enforme per bo. & sufficient reason q̄ a luy come aver droit Soveraigne Sr̄ sē du dit Roylme de Escoce, & la Connusance d'oyer trier & determin. nostre droit, nous ne nostre volunt sans nul maner de force ou distresse de droit devant luy come Soveraigne Sr̄ de la terre, &c. l'an de grace, 1291.

2. There was another like writing, whereby these competitors doe yeeld some of the Kingdome of *Scotland* unto the said *E.1.* untill he should determine the controversie.

3. After the sentence given by *E.1.* for *John Balioll*, who afterwards adhered to the French against *England*.

Whereupon *Ed.1.* prosecuting war against *Scotland*, the Pope intermedling, a Parliament was proclaimed to be held at *Lincolne* 29. *E.1.* where it was agreed that the King should write to the Pope touching his right

to

to that Crowne, and the wrong offered him. And that the Nobility should write, that they neither could, nor ought to suffer, that the King of *England* should referre the same to the Popes sentence, they subscribing their names and titles of Honour, among which was the said *Iohn Hastings* name in this manner, *Iohannes Dominus de Aburgavenny*. *Nota*

In 16. *E.* 1. the King purposing to go to *France*, charged the Lords Marchers of *Wales* to be resident upon their Baronies, fearing the invasion of the *Welch*. And *Anno* 17. in the Rebellion of *Rise ap Meredocke* the King being in *France*, directeth his Writ unto the said Marchers under the *Test. Edmundi fratris sui*. And among other the Barons there named as *Ed. de Mortimer, Roger Mortimer, Pet. Corbet. Roger le Strange, Fulk Fitzwarren. Galfrid de Canmyl, William Mortimer, Guy de Brian, Iohn de Hastings, Ra. de Touy, William de Bruse, Iohn Tregonse, Bogok Nevill, Ric. Fiz-Allen, & Io. Fitz-Reginald,* and all Barons Marchers. 4. *Ex Rot. Wal. 17. E. 1. in dorso*

Againe,

5. 20. E. 1. 14 *in recept. Scacar.*

Againe 20. *E.* 1. When there was a great quarrell between *Gilbert de Clare*, Earle of *Glouceſter* and *Hereford*, and *Humfrey de Bohum*, late E. of *Hereford* and *Eſſex*, whereupon murders, *&c.* had beene committed in their lands in *Brecnocke*.

A Commiſſion was awarded to the Biſhop of *Ely*, *William de Valence*, the Kings vncle, *Io. de Mettingham* one of the Iudges, and unto *Robert de Hereford*, to heare and determine the ſame. In which Commiſſion the ſaid *Iohn Haſtings* was one. In which the Commiſſioners would have had the ſaid Barons to have beene ſworne to make preſentment thereof, which they refuſed, ſtanding upon their priviledge, and therfore the Enqueſt was impannelled of others.

Som. Parliamen. Anno 24. E. 1. *Som. Parl. a.* 35. *E.* 1.

P. 23. *E.* 1. The ſaid *Iohn* was ſummoned to the Parliament, which was to be holden the Sunday next after the feaſt of St. *Martin*, as alſo to a Parliament at *Carlile*, 35. *E.* 1.

Obiect. 1.

It will be objected that *Iohn* his father was ſummoned in 49. *H.* 3. and therfore in regard thereof and not

in

in respect of this Barony was this *John* summoned.

It is true that *Henry Hastings* was summoned in 49. *H.* 3. he was Captaine of the Castle of *Killingworth*, and held it against the King, and beheaded the Kings Messenger sent unto him, for the which fact was the said imprisonment before spoken of; And the Barony of *Hastings* descended not to the said *John*. Therefore in the letters to the Pope, and in his claime to *Scotland* he writeth himselfe *Iohannes Hastings*, *&c.* and not *Dominus Hastings* which if that title had belonged to him he had expressed it.

Respon.

Ed. Kenel. act. 34. *Cron. Holens.*

That he used the Title of *Dominus Abergav.* as *Dominus Proprietarius*, and not as *Dominus Honorarius*.

Object. 2

The same may be said of the other Competitor, and the Letters to the Pope which were ridiculous.

In the Summons 23. *E.* 1. he is named *Io. Hastings Mil.* and not *Iohannes Dominus Hastings*, therefore, *&c.*

Respon.

They used not then to expresse the place except for distinction.

Object. 3

Now

Now to the Descent.

Continuance of the descent.

THis *Iohn* died, 6.*E*.2. having issue *Iohn*, who died 18 *E*.2. And in the *Diem eligit extremum*, he is stiled *Johannes Hastings, Dominus de Abergav.* and Earle of *Pembrooke*, *tempore E*.3. he died 12.*E*.3. having issue *Iohn* his Heire, Earle of *Pembrooke*, and Lord of *Abergav.* who died 49. *E*.3. having issue *Iohn* Earle of *Pembrooke*, &c. who died by reason of a wound received at a Just at *Woodstocke* about 13.*R*.2. he was the last of that name, Baron of *Aburgavenny*.

Ex bundel. Esc. 18. *E*.2.

The Family of Beauchampe. *Lord of Aburgavenny.*

Beauchamp Lord of *Aberg.*

AFter the death of the said *Iohn*, *Reginald Gray*, Lord *Richyn*, Sonne of *Elizabeth* Sister of the said *Iohn* the great Grandfather of him that last died, claimed this Barony, and thereof had Livery. And thereupon grew a contention concerning the bearing of the Armes of *Hastings* with-

without difference betweene the Lo. *Gray* of the whole blood, and Sir *Edward Haſtings* of the halfe blood, which was adjudged for the Lord *Gray* in the Earle Marſhalls Court.

A like contention was betweene the Lord *Gray* and *William Beauchampe*, third ſonne of *Thomas* the elder Earle of *Warwicke*, who claimed this Barony againſt the ſaid Lord *Gray* by vertue of an intaile from the ſaid *John* the elder, which proved, and upon Compoſition the ſaid *Reginald* 15. *R.* 2. levied a Fine to, *&c.* whereby he acknowledged the right of the ſaid Caſtle, to the uſe of the ſaid *William Beauchampe*, as by an old Mſſs remaining with the Earle of *Kent* may appeare, as alſo by a partition of the ſaid Lands.

M. 15. *R.* 2 *& recordat. Term. H. prox.*

Vid. the Earle of *Kents* booke.

FINIS.